H.R. 3694, THE CHILD ABUSE ACCOUNTABILITY ACT, AND H.R. 4570, THE CHILD SUPPORT RESPONSIBILITY ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION AND EMPLOYEE BENEFITS

OF THE

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JULY 12, 1994

Serial No. 103–47

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JULY 12, 1994

H.R. 3694, THE CHILD ABUSE ACCOUNTABILITY ACT, AND H.R. 4570, THE CHILD SUPPORT RESPONSIBILITY ACT

TUESDAY, JULY 12, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS,
Washington, DC.

The subcommittee met, pursuant to call, at 11:10 a.m., in room 311, Cannon House Office Building, Hon. Eleanor Holmes Norton (chair of the subcommittee) presiding.

Members present: Representatives Norton and Morella.

Member also present: Mrs. Schroeder.

Ms. NORTON. Ms. Bryne and Mrs. Morella are on their way. But we have three distinguished Members who for as long as this issue has been on any burner have provided the singular leadership that has finally produced the bill that is before us today. In order not to hold them up, I am going to begin with my statement and then proceed.

Today, the Subcommittee on Compensation and Employee Benefits convenes to hear testimony on two bills. The first, which responds to painful experiences, would allow annuities of Federal employees to be garnisheed to satisfy court judgments for child abuse. The second is landmark legislation that would finally introduce an effective system for the payment and collection of child support.

First, H.R. 3694, the Child Abuse Accountability Act, was inspired by the case of two sisters, Sharon Simone and Sue Hammond, who prevailed in a civil lawsuit for sexual child abuse against their father, a former FBI agent.

Although vindicated in a court of law, the sisters continue to be victimized by a father who successfully liquidated all his assets and fled the country avoiding any payment of the $2.2 million in court-ordered damages for his abuse.

Because he was retired, the father had no wages to garnish and his retirement annuity is protected from garnishment for purposes other than child support and alimony.

The case was recently dramatized in a television movie called "The Ultimate Betrayal," which starred Marlo Thomas as Sharon Simone. The subcommittee is pleased that Ms. Simone, one of the sisters, will testify this morning.

The subcommittee is particularly pleased to be the first committee to hold hearings on H.R. 4570, the Child Support Responsibility Act of 1994. H.R. 4570 represents the first national approach to as-

suring child support from both parents. No issue before the Congress has undergone more study or engendered more widespread anguish.

The Federal sector both in its responsibility for Federal benefits for millions of Americans and as the largest employer in the country is the most critical actor in solidifying national enforcement of child support.

Among other things, H.R. 4570 would allow back child support to be garnished for Federal benefit programs such as veteran benefits, black lung benefits, Federal death benefits, and workman's compensation, all of which are currently protected from garnishment.

Moreover, the bill would require new hires of the Federal Government who owe back child support of more than $1,000 to make arrangements with a court or an administrative judge to pay that child support as a condition of employment. This provision, technically within the Subcommittee on Civil Service's jurisdiction, can demonstrate the Federal Government's role as a model that other employers hopefully will follow.

I have convened this hearing on the first day following the July 4 recess in the hope that the expeditious movement of these bills could result in passage this session. Child abuse and child support both cry out for effective statutory remedies. No issues have been studied more or are more necessary to pass in this Congress.

Our first panel consists of the Honorable Patricia Schroeder, the Honorable Marge Roukema, and the Honorable Olympia Snowe. These Members will testify on either of the bills.

I want to not only welcome them but thank them for appearing and for work that most of us will never know about, because it has been such long and effective work in the vineyards in order to produce this bill.

So, you may speak in whatever order you please. And you may speak on either bill, of course.

STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mrs. SCHROEDER. Well, maybe we will start out here and I will kick it off as a member of the committee.

And I cannot thank enough the Chair for doing this. I know you are an active member of the Congressional Caucus on Women's Issues, and I was absolutely thrilled when we got together this comprehensive child support bill that Congresswoman Roukema and Congresswoman Kennelly have worked so long and hard on the Interstate Commission putting those pieces together.

And I was so thrilled that the caucus has been able to make this front and center, get commitments from both the Speaker and the minority leader, Mr. Gingrich, that we can try and blast this out of the seven committees.

And I can't thank you enough for being the first to start the hearings. It has been women in the leadership all the way. So, it is an honor to see the first committee hearing be the one chaired by one of our good members, thank you.

And thank you so much for tackling this because I think it is a great embarrassment that Federal employees too have been able to

duck and hide on child support enforcement. But since other members will address that more clearly, let me move on to the second bill that I feel equally as passionate about, and that is the Child Abuse Accountability Act.

I feel very passionately about this because when I first came to Congress I started working in the child abuse area, and we now know that every 13 seconds in this country a child is beaten or abused in some manner. In the first minute that I have now been speaking over 4 children have been battered in some manner by someone who is supposedly caring for them. It is an interesting definition of caring.

What this bill does is address the people who have now come forward and started to take on this. The scars from this kind of abuse, obviously, don't appear till much later in life, because suddenly people start suffering repercussions and flashbacks, nightmares, chronic depression, all sorts of things that happen. And as we see more and more people learning about this and knowing what to do about this, people are beginning to move into the court systems for these very traumatic trials.

I got involved because of one of these very traumatic trials. These two sisters that you mentioned, Madam Chair, whose father had been in the FBI and his specialty had been child abuse—he would be out on the road talking about child abuse, and then he would go home and be a child abuser. And the whole time the mother would tell the young women, "We can't do anything about this because dad's job would be in jeopardy." Obviously, it probably would.

And now, after they worked this through as older women, went to court, went through the painfully difficult traumatic trial, when they got done and they got their judgment from the court, having convinced them that indeed this is what had gone on during their lives, they move out and find out that their father is able to hide behind Federal immunity. Because as an FBI agent his Federal pension could not be attached for this payment.

You couldn't have a better case because he made his living preaching against what he was doing, and now his pension can't be touched. It just seems to me we absolutely have to stop this injustice, and that is what this bill is all about.

You are going to hear much more eloquent testimony from Sharon Simone, who has become a friend of mine and can lay this all out very, very clearly. For me to even attempt to verbalize her concerns would be not nearly as good as hearing them from herself.

So, I am going to ask unanimous consent to put my entire statement in the record.

Ms. NORTON. So ordered.

Mrs. SCHROEDER. But I think it is very, very important that we move on this, that we act swiftly to combat this injustice. You know, any country that doesn't protect its children isn't very concerned about its future. And when you see the Federal Government out there leading the way on allowing people to hide behind Federal immunity that is really rather shocking.

When I first came to Congress you couldn't even attach wages for child support. We worked very hard to get Federal wages attached

for child support. We worked very hard to get all sorts of things done to keep pounding away at this.

But I think this is the next step. If we don't hold child abusers accountable, if they can hide behind Federal immunity and laugh at the law, we all look like fools.

So, I thank you so much for having the hearing on both of these. I have put my statement in the record, and let me now yield to Congresswoman Roukema.

[The prepared statement of Hon. Patricia Schroeder follows:]

PREPARED STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Madam Chairwoman and Members of the Subcommittee: Thank you for convening this hearing to discuss H.R. 3694, the Child Abuse Accountability Act, and H.R. 4570, the Child Support Responsibility Act of 1994. This nation's commitment to our children and their welfare is of vital importance. I have introduced these bills to address two issues that threaten the well-being of our most vulnerable population. My fellow Congresswomen will be addressing the Child Support Responsibility Act in detail, so I will limit my remarks on this topic.

The state of child support in this country is a national disgrace. Every year our children are robbed of $34 billion by parents who do not live up to their support obligations. For many of these children this means no warm jacket this winter, no notebooks for school, no full stomach at night. It's the difference between barely getting by and living in dire poverty. This section of the Child Support Responsibility Act addresses federal employees who are shortchanging their children by refusing to support them. This legislation will make it impossible for deadbeat parents to hide behind their federal employment while reneging on their financial responsibilities. Any individual who owes more than $1000 in child support, with no plan to pay the debt, will be ineligible for federal employment. Already employed individuals will be compelled to financially care for their children if they want to receive their full employment benefits. It is crucial that we take the lead on this issue: our government must not continue to shield deadbeat parents at the expense of our nation's children.

The rest of my remarks will focus on the Child Abuse Accountability Act, a bill designed to hold child abusers accountable for their horrific crimes against children.

Every thirteen seconds in this country, a child is beaten, kicked, burned, molested, or otherwise abused. That means that in the one minute I have been speaking, four children have been battered, fondled, raped, or otherwise tormented by someone "caring" for them. According to the National Center for the Prosecution of Child Abuse, there are over 2.9 million reports of suspected child abuse and neglect per year (1992). Moreover, 1200 children are killed every year in this country. That's three dead children every day.

For the children who survive a childhood marred by physical and mental anguish, the scars do not disappear so quickly. Survivors suffer the repercussions of abuse far into adulthood. Flashbacks, nightmares, chronic depression, unpredictable bouts of terror—the list is exhaustive and horrifying. Childhelp USA estimates that up to 60 million people are living with the scars of childhood sexual abuse in this country today. NOW Legal Defense and Education Fund predicts that 28 million more children will be added to that gruesome roster in the next decade.

Some of these survivors turn to our court system to hold their abusers civilly accountable for their crimes. They endure traumatic trials, reliving the years of torment, in order to hold their abusers responsible when our criminal justice system has failed to do so. Tragically, vindication by a court is only the beginning of the struggle for countless victims. Even after a court finds the abuser guilty and awards the survivor compensation, the federal government nullifies this victory by refusing to pay the money that the court was awarded.

Child abusers are able to avoid paying awards by liquidating their assets and fleeing. Often, the only source of money available is a pay check, which could be easily garnished. Federal pensions, however, have been singled out for special treatment. Under the current law, the Office of Personnel Management refuses to satisfy a valid, court ordered judgment with an abuser's pension. Uncle Sam shelters abusers by making their pensions untouchable. This is obstruction of justice and usurpation of judicial function. Instead of helping survivors to secure the awards properly due to them, the federal government collaborates with the abuser and spites the court's verdict.

Today you will hear from Sharon Simone, one of many survivors battling the Office of Personnel Management for money that has been awarded to her. Sharon and her sisters are survivors of childhood abuse. Their father—their abuser—was an FBI agent and special investigator for the District Attorney's Office, specializing in child abuse. When he was not lecturing about child abuse around the nation, or helping to develop incest and child abuse statutes, he was physically brutalizing and sexually victimizing his own children. Four years ago a court found him guilty of committing incest, and tormenting his children with "consistent emotional and physical abuse." Four years ago the sisters were awarded a precedent setting $2.3 million. For four years these women have been blocked by the federal government from recovering their money—money to pay for the tens of thousands of hours of therapy, the repeated hospitalizations, the lost jobs and destroyed families that the state instigated.

H.R. 3694 will end this injustice by making federal pensions garnishable for court ordered child abuse payments. The bill is limited in scope, applying only to legal judgments based "in whole or in part upon the physical abuse of a child. The law will not operate retroactively, so that only court orders received by the Office of Personnel Management after the date of enactment will be enforceable. Under current law pensions are already garnishable for child support and for spousal payments. This bill adds child abuse compensation as an obligation the federal government cannot shield an offender from satisfying.

We must act swiftly to combat the injustice addressed by this legislation. By standing in the way of child abuse redress, we are compounding the victimization these survivors have already suffered. We are also sending the message to abusers that the federal government will protect them from their offenses. Protecting our children from child abuse in the first case is of vital importance, but we must be equally attentive to those children that we failed to protect. A nation that does not protect its children is a nation without a future. And a federal government that protects abusers is abetting that tragedy.

STATEMENT OF HON. MARGE S. ROUKEMA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mrs. ROUKEMA. Thank you. I thank the Chair, and I am certainly appreciative of the fact that you have shown your enthusiasm for child support reform, as has the ranking member, Mrs. Morella, by scheduling this hearing. I do want to take my time to discuss the child support reforms that are in this legislation.

I would first point out that, as I think Mrs. Schroeder has already indicated, in contrast to the attitude in the early 1980's, when this subject was controversial, now, there is no question about the pressing need for improving our comprehensive child support efforts. Members of both parties, many who may have vastly different ideas as to how we want to reform welfare, readily agree that child support reform must be a critical component of any successful welfare reform proposal.

But make no mistake about it. Child support enforcement is welfare prevention. In fact, nonsupport of children by their parents is one of the primary reasons families end up on welfare rolls in the first place.

Children who are deprived of the support to which they are legally and morally entitled face a lifetime of economic, social and emotional deprivation. I think it should be clear to all of us here, that the failure to pay court-ordered child support is not a victimless crime. The children who go without these payments are the first victims. But, ultimately, the taxpayers pick up the welfare tab for the deadbeats who do not meet their financial obligations: the taxpayers are the victims

We have asked for child support enforcement reform now, and I think we should note for the record that it cannot wait upon welfare reform. With or without welfare reform, the leadership in both

parties, Republican and Democratic have given their support to our effort, as Mrs. Schroeder has already indicated.

And I think it is something that should be noted here that if we move with this legislation with the initiative of your subcommittee, if we move on this, finally Members of Congress will have something to go home and report to the voters: that gridlock has been broken and this is a real success of this legislative session.

By way of background, Madam Chair, I do want to note, as has been referenced, the fact that Mrs. Kennelly and I served as a member of the U.S. Commission on Interstate Child Support Enforcement. The Commission, I think as you know, was composed of experts in all areas of enforcement.

And the legislation that we have recommended and that your committee has partial jurisdiction over is really a summary of the efforts of that Commission. The point of the Commission was to underscore what we have known for certainly the past decade, that the interstate child support system is only as good as its weakest link.

And what we have tried to do in these reforms is deal with the need for ironclad interstate requirements. I think it was put most succinctly by one of the county sheriffs who spoke to me some years ago and said, "We will never be able to get parents to meet their obligations when they can skip across the river into a neighboring State to avoid payment." That is the most succinct and easy way to understand what we are about here.

For these reasons, our bill H.R. 4570 stresses the interstate enforcement requirements. I don't want to go into all of the issues involved in that because they are not in your jurisdiction, but I think it is important for you and the others here today to understand the comprehensive nature of this legislation both as it relates to Federal employees as well as the interstate connections.

I think the point is that we need to get at the deadbeats across the lines. This was recognized in our first reform bill of 1984 but has been recognized over the years as not being as efficient as it could be because, unfortunately, the various levels of State bureaucracy still make wage withholding that was in the original legislation unnecessarily complex and cumbersome. Our bill streamlines this process.

That is the so-called direct service component of the legislation, and it is one of the most successful methods of child support enforcement available, with success rates of 80 percent and more when they are used.

One of the States that has the most outstanding record with respect to some of these reforms that they have taken the initiative on is Maine, and I will leave that to Ms. Snowe to discuss the fact that they have had tremendous success withholding driver's and occupational licenses from deadbeat parents.

Our bill also increases the use of credit reporting and garnishment. We improve and expand the national reporting for all support orders and computer database of outstanding child support obligations.

I must note a recent experience in the State of New Jersey that stresses the importance of the Federal locator network, and I don't think we can underestimate the importance of this. In New Jersey,

because they have a computerized database on automobile registration, they are taking aggressive actions against auto scofflaws and intercepting tax refunds and garnishing paychecks.

What does that have to do with child support? Frankly, it shows that if we can find a way to crack down on automobile fines I certainly would hope we could use the same types of resources to help parents get their court-ordered child support.

In the past, we have been told that the problems in child support collection are a function of overwhelming caseloads and limited resources. Well, I think if they have the database to find the way to put a lien on someone's house for a parking violation we ought to be able to use that same database and same sanctions when they fail to pay child support enforcement, and that is an essential component of our reform here.

Finally, and I will only make reference to this because it is not appropriate for today's discussion, but an essential component of our reform legislation is to mandate comprehensive, hospital-based paternity programs. That is not only essential to child support enforcement but also a key component of welfare reform.

With respect to the direct jurisdiction of this committee, I would like to note that some of the most important provisions in our legislation relate to your jurisdiction, and there are several critical provisions related to the Federal Government and the child support owed by Federal employees, which of course, have been referred to your committee.

These provisions were drawn from the recommendations of the U.S. Commission, and I would urge that the subcommittee act favorably upon them. I believe that you are committed to an expedited procedure as far as our understanding of things are.

Section 403 of the bill will allow back child support to be garnished from certain Federal benefit programs. Under current law, these benefits are often shielded from garnishment under the antiassignment clauses. These antiassignment clauses were designed to protect Federal benefits from certain commercial claims.

Now, I believe this is quite controversial or could be, but I do think that the way the Commission noted in its report is the direction in which we should go; namely, that family obligations, particularly obligations to children, are different from commercial debts and deserve different treatment.

Section 414 would similarly require States to establish procedures under which back child support could be garnished from retirement funds without the establishment of a separate court order. This is very important because it is essential that we streamline the present system.

Under present law custodial parents may already obtain support from public retirement benefit plans as well as private plans protected by ERISA. Our provision provides for expedited consideration of this legal garnishment and eliminates layers of bureaucracy and court appearances to obtain what is rightfully owed.

Finally, perhaps the most pioneering of the reforms relating to Federal employees is the provision in the bill which would prohibit the Federal Government from employing, paying benefits or making loans to deadbeat parents.

Under the bill, we will positively prohibit the Federal Government from aiding and abetting, so to speak, the deadbeats who have failed to make court ordered payments. And I want you to understand these are court-ordered payments, nothing more, nothing less. We require the Federal Government to refrain from providing assistance to a deadbeat who owes more than $1,000 in back child support.

I want you to understand here that this is essential and really at the heart of this reform. I also want to mention here for the record some who oppose this provision may come before you and ask, "How can I repay my child support if I can't get a job?" Legitimate question.

However, the answer is also legitimate and quite a simple one. We do not say in this legislation that the Federal Government cannot hire someone who owes back child support. But what we do say is that such an employee must make arrangements with a court or an administrative judge to pay back that child support before they can be hired. That is simple fairness for parents, for children and for the taxpayers.

In summary, I think we can say that the Federal employees should and will meet the same obligations under this legislation as the private sector, no more and no less.

Thank you. And I ask unanimous consent for the full text of my statement to be included in the record.

Ms. NORTON. Thank you. So ordered.

[The prepared statement of Mrs. Roukema follows:]

PREPARED STATEMENT OF HON. MARGE S. ROUKEMA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Thank you, and my thanks to you, Madam Chair, for calling this hearing this morning. I know you share the same enthusiastic support for passing a comprehensive child support reform bill as I do, as does the distinguished Ranking Member, Mrs. Morella. I am pleased that both of you are cosponsors of The Child Support Responsibility Act of 1994, and I am most pleased that your Subcommittee is beginning expeditious hearings on this much-needed legislation.

Before turning to some of the specific provisions of the bill which have been referred to the Subcommittee, I would preface my remarks with some observations on the critical nature of the child support issue.

As this Congress begins earnest discussion and debate of various welfare proposals, there is certain to be much disagreement, and many issues on which members in good faith will disagree.

One item that is NOT a question, however, is the pressing need for comprehensive child support reform. Members of both parties, who may have vastly different ideas as to how we should reform welfare, readily agree that child support reform must be a critical component of any successful welfare reform proposal.

Make no mistake about it: effective child support enforcement is welfare prevention. And a tough, comprehensive child support enforcement title is a central and critical element to any effective welfare reform proposal. Indeed, non-support of children by their parents is one of the primary reasons families end up on the welfare rolls in the first place.

Children who are deprived of the support to which they are entitled face a lifetime of economic, social and emotional deprivation. It is a national disgrace that our child support enforcement system continues to allow so many parents who can afford to pay for their children's support to shirk these obligations.

Finally, we must be clear. Failure to pay court-ordered child support is not a "victimless crime". The children going without these payments are the first victims. But ultimately, the American taxpayers are the victim, when they pick up the welfare tab for the deadbeat dads and deadbeat moms who do not meet their financial obligations.

Indeed, the Caucus on Womens Issues has recognized this consensus, and this broad, bipartisan support. We have asked that child support reform be moved NOW,

this session. We needn't wait for the complicted and fractious debate over welfare reform. We can address the glaring holes in our child support system today.

I am pleased to report that both Republican and Democratic leaderships have given their support to our effort to bring a child support bill before the House this year. I am convinced that with some hard work, we can pass a comprehensive child support reform bill in this session.

I am most pleased to join with my colleagues here to testify in support of H.R. 4570, the Child Support Responsibility Act of 1994. This is a comprehensive reform of our child support enforcement system, and is based largely on legislation I have previously introduced, H.R. 1600. H.R. 1600 was drawn from the recommendations of the U.S. Commission on Interstate Child Support Enforcement, of which I was a Member.

As Subcommittee Members examine these recommendations, it may be useful to provide some background as to the nature, membership and report of the Commission.

I have long been a leading voice in this debate, on both the Child Support Enforcement Amendments of 1984, and the Family Support Act of 1988. Along with my colleague Mrs. Kennelly, and Senator Bill Bradley, I served as a member of the United States Commission on Interstate Child Support Enforcement.

The Commission was composed of experts in all areas of child support enforcement: family law judges and attorneys, state and local officials, caseworkers, and of course, parents and child support advocates. Our Commission was charged with a comprehensive review and report of recommendations for reform of our interstate child support system, which was completed in August, 1992.

Perhaps the most important fact revealed in the Commission's report was that our interstate child support system is only as good as it weakest link. States that have made child support a priority, and adopted aggressive reforms, are held back by those which have not.

Or as one of my county sheriffs told me, we will never be able to get parents to meet their obligations when they can "skip across" the river into a neighboring state to avoid payment.

That is why we need comprehensive federal reform of our child support system—to ensure that all states come up to the "highest" common denominator. In that light, our legislation is a comprehensive set of reforms to our state-based child support system.

Among the most important and effective "get tough" reforms contained within H.R. 4570:

We require new initiatives to mandate comprehensive hospital-based paternity establishment programs. The alarming rise in single-parent families, and the social and economic consequences to children raised without the support of both parents is well-documented and well-known. The rapidly increasing numbers of one-parent families makes even more clear that the most crucial element for the establishment and collection of court-ordered child support must be paternity establishment.

The U.S. Commission in its report indicated that the one time when we are most able to obtain fathers' acknowledgment of paternity is at birth, in the hospital. The Commission estimated that more than 80% of non-married parents are in contact with one another at the time of the child's birth. States that have emphasized outreach at hospitals and birthing centers have been particularly successful in increasing parentage determinations.

The comprehensive hospital-based paternity establishment programs in our bill build on that premise, and require all hospitals to have clear, simple and uniform procedures for parents to acknowledge paternity of birth. Moreover, we shift the burden to proof so that parents who have acknowledged paternity at birth cannot turn around when a support order comes and say "prove it".

Another key provision of our bill requires all States to make it a crime to willfully fail to pay child support, and provide criminal penalties for the 'deadbeats'. The federal government has wisely adopted federal criminal penalties for those who cross interstate lines to avoid child support. States should be held to the same standard, and use criminal penalties for those who choose not to pay.

Our bill changes the law to definitively allow States to serve child support orders on our-of-state employers. This was clearly the intent of Congress when we adopted mandatory wage withholding for new child support orders. Unfortunately, the various levels of state bureaucracy still make wage withholding unnecessarily complex and cumbersome. Our bill streamlines this process, and removes levels of bureaucracy from the child support collection process. We allow wage withholding to work simply and effectively.

As the U.S. Commission noted, this "direct service" is one of the most successful methods of child support enforcement available, with success rates of 80% and more when used.

Our bill addresses some of the important "gaps" in our present system: we require States to withhold drivers' and occupational licenses from "deadbeat parents". This has already shown very promising results in those states which have adopted it. For example, the State of Maine reports that in the first year of its program, more than $11 million in back child support has been collected under these sanctions. Again, by applying such proven methods on a federal level, we ensure that all States rise to the level of the best, rather than sink to the worst.

Finally, our bill increases the use of credit reporting and garnishment; and requires uniform, national subpoenas to simplify burdensome paperwork requirements. We improve and expand the national reporting of all support orders, and the computer data base of outstanding child support obligations.

These are some of the most important provisions of our legislation. I know that several critical provisions related to the federal government, and the child support owned by federal employees, have been referred to this Subcommittee, and will be the subject of close scrutiny.

These provisions were also drawn from the recommendations of the U.S. Commission, and I would urge the Subcommittee to act favorably upon them. Specifically, our bill includes the following provisions related to federal employees:

Section 403 of our bill will allow back child support to be garnished from certain federal benefit programs, such as veterans, black lung, and federal death benefits; and workman's compensation awards.

Under current law, these benefits are often shielded from garnishment under "anti-assignment" clauses. These anti-assignment clauses were designed to protect federal benefits from certain commercial claims. But as the Commission noted in its report, family obligations are different from commercial debts, and deserve different treatment.

Section 414 would similarly require States to establish procedures under which back child support could be garnished from retirement funds without establishment of a separate court order. In short, we are streamlining the present system.

Under present law, custodial parents may already obtain back support from public retirement benefit plans, as well as private plans protected by ERISA. Our provision provides for expedited consideration of this legal garnishment, and eliminates layers of bureaucracy and court appearances to obtain what is rightfully owed.

Finally, perhaps the most pioneering of our reforms relating to federal employees, our bill will prohibit the federal government from employing, paying benefits, or making loans to "deadbeat parents!

Under our bill, we will positively prohibit the federal government from "aiding and abetting" deadbeat parents who have failed to make court-ordered payments. We require the federal government to refrain from providing assistance to a "deadbeat dad or mom" who owes more than $1,000 in back child support, and is making no court-arranged effort to repay the arrearage.

That we would refuse to subsidize the behavior of deadbeats would seem simple logic. Unfortunately, under current law, no such arrangement exists. Without such a safeguard, the government can and will continue to provide financial assistance and loans to a parent, without corresponding responsibility for court-ordered payment.

So "the left hand" of government can be paying taxpayer dollars in welfare to a single parent trying to raise children without court-ordered child support, while the "right hand" is providing deadbeats with a college loan or a government-backed mortgage! This may be the most classic example of "waste, fraud, and abuse" we find in the welfare debate, and we must end it here and now.

I would also make clear for the record: some who oppose such a provision may come before you and ask "how can I repay my child support if I can't get a job? Well, the answer is simple: we do not say the federal government cannot hire someone who owes back child support. But we DO say that such an employee must make arrangements with a court or administrative judge to pay back that child support before we hire them! This is simple fairness—for parents, and for taxpayers.

One final point: as of January 1, 1994, all new child support orders are being delivered through employer-based wage withholding. Our legislation calls for creation of a national child support "withholding form" for new hires, and improves the computerized federal database for tracking child support orders. In short, our system makes employers a pivotal part of the child support collection process—it is only right that the federal government, in its role as employer to millions, meet its responsibilities in this important area.

I thank the Subcommittee for providing this opportunity to discuss the nature of our child support problem, and the solutions contained in our bill. I would urge the Subcommittee to act favorably on this legislation, and allow us to bring a much-needed reform bill before the 103rd Congress. I would be happy to answer any questions from the Members.

Ms. NORTON. Ms. Snowe.

STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Ms. SNOWE. Thank you, Madam Chair, and I want to say how pleased I am to be here today before your committee and join my colleagues Congresswoman Schroeder and Congresswoman Roukema, both of whom have demonstrated leadership on this issue over the years, as you have, Madam Chair, and our ranking Republican, Mrs. Morella. And I am just pleased that we are able to move forward on a bipartisan basis within the Congressional Caucus for Women's Issues as well as our own leadership in the House to advance this legislation so that we can see successful results at the end of this legislative session.

I think there has been a lot of attention given to this issue, and rightfully so. It deserves national attention. I think we all agree that it goes beyond parochial interests, beyond State boundaries, and certainly even beyond national boundaries. Child support enforcement measures I think do require a national solution.

So, I am pleased to join this effort that will not only strengthen existing laws but go beyond that and put in place enforcement provisions that are not in place today.

I was pleased that the Speaker of the House has indicated he will do everything he can to assist us in this effort, as well as Newt Gingrich, our minority whip, because this legislation in its comprehensive fashion should advance through this congressional session.

More importantly is the reason why we are doing this. There are millions of American families and children who suffer the consequences of deadbeat parents. When you consider the fact that 25 percent of children live in single-parent households, they bear a heavy burden, without a doubt.

Fifty percent of the 10 million women who have children with an absent father are the ones that receive child support payments. But that clearly is not enough, because one-half of those receive full payment and a quarter of them receive partial payments. So, actually being given—making the award and actually receiving the full payment of child support payments are two different things, and that, of course, is what has to change.

Partial federalization of child support enforcement measures has been favored by many of us in Congress, as well as numerous groups, and for good reason. Because while States have made great strides in streamlining the process and strengthening their enforcement mechanism, about 30 percent of the cases really comprise national cases. They go beyond State boundaries and therefore require interstate enforcement, and that, obviously, can only be done at the Federal level.

It is interesting to note since 1984 there have been 12 studies conducted by the General Accounting Office on the poor performance of the public child support enforcement in interstate cases and

failure to enforce existing awards. In 1989, the inspector general of the Department of Health and Human Services conducted a study that matched more than 65,000 absent parents who work for the Federal Government, and that comprises a total of $284 million in past due child support payments, $187 million of which relate to children who receive AFDC benefits.

We know that $48 billion has been estimated by the Urban League in terms of the potential for collection of child support payments on an annual basis, and yet today the States only collect $14 billion. So, there is a $34 billion gap with 15 million cases, and we know that the caseload is only growing.

While I think about all of these statistics and what has come before us is a clarion call for reform, and that is why I think that we need to address this issue as expeditiously as possible, because there is an institutional inability for the States to move forward on some of their efforts without Federal leadership. They do not have the technical know-how, nor do they have the legal support in order to make the collections necessary.

That is why I think this approach that we have incorporated in this legislation to strengthen interstate enforcement will be very valuable. In fact, just recently my husband and I were approached in the airport on this very issue, because there was a woman who is attempting to get her child support payments, but unfortunately her husband lives in Florida and not in Maine, and he is a professional. And she has not been able to get the support necessary in order to collect those payments. And that clearly is a bureaucratic loophole. It is a legal loophole and one that has to be closed.

For purposes of testimony here today, obviously, I think Congresswoman Roukema has cited all of the legislation and the provisions very well. But I think it is critically important that the Federal Government not be an unwitting sanctuary or protector of deadbeat parents, and that is why it is so essential that we follow on the U.S. Commission on Interstate Child Support recommendations and waive the sovereign immunity of the Federal Government to extend garnishment to those Federal benefits that previously have not been subjected to withholding.

The bill also will simplify child support enforcement orders that would require a separate court order to attach the interest in Federal pensions, public or private, and we think this will expedite the process in a timely and cost effective manner.

And finally, I think, the bill is establishing uniformity in the withholding process with respect to the information and the procedure itself. And that is, of course, establishing uniformity of information, the W–4 forms, and creating a central Federal registry to which all of this information must be provided and to which all employers have to provide and submit specific information.

Finally, I do think it is also vital that no one is eligible for Federal benefits and loans if they have arrearages of more than $1,000, if they have not contacted the Federal Government and submitted to a compliance payment plan.

We know at the State level, as Congresswoman Marge Roukema expressed, in the State of Maine we have taken some very revolutionary steps. Governor McKernan is the first governor in the Nation who signed into law and decided to revoke driver's license and

professional licenses, and I can tell you that gets everybody's attention. And the fact is that more than 90 of the 144 individuals identified who would have been subjected to that revocation have come forward.

Since the law has been enacted somewhere between 9,000 and 10,000 more people have been identified as deadbeat parents and are required to make their child support payments and have come forward. We have had to try to do something different in the State of Maine in order to stop this hemorrhaging of parental responsibility, and I think that we can learn from that example. In fact, we have included a similar provision in our omnibus legislation.

Finally, I would like to commend Congresswoman Schroeder for her legislation, as well, on the Child Abuse Accountability Act. We don't want to create a two-tiered standard here or somehow think it is the lesser of two evils that we are not going after those who are required to make child abuse payments as well to make up for a very egregious past, although I don't think you can compensate for that financially.

But clearly we have to right a wrong in some way, and I think we want to make sure there is no double standards here. That we are treating child abuse payments the same as we would child support or spousal payments. So, I certainly credit her for that initiative because clearly it is something that we have to do to make it right and at least try to help out in that regard.

So, again, I just want to thank you, Madam Chair, for giving us this opportunity to express our views here today. And I ask unanimous consent to include my entire statement in the record.

Ms. NORTON. So ordered.

[The prepared statement of Hon. Olympia J. Snowe follows:]

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Thank you, Pat. I'd like to also thank the Chair of the Subcommittee on Compensation and Employee Benefits, Representative Holmes-Norton, for scheduling this important hearing today on legislation to improve child support enforcement measures and to allow for the garnishment of federal pensions to collect on damages awarded due to child abuse cases. I'd also like to recognize another valuable member of the Congresswoman's Caucus, Ranking Member Connie Morella for the leadership she has provided on this critical national issue.

As I think you know, Madam Chairwoman, the issue of child support enforcement has received—and deservedly so—much attention in recent weeks and months as we begin the dialogue on welfare reform. The timing of this debate offers us a unique opportunity to improve upon existing child support enforcement mechanisms and establish new enforcement systems where none currently are in place. The two bills before you today will move us forward and in the right direction to do just this. And, possibly for the first time, we recognize that the issue of child support enforcement goes far beyond parochial interests or state lines—even national boundaries; as a national problem for our children and their families, child support enforcement merits a truly national solution. And with the Subcommittee's help, that is exactly what we hope to achieve.

Fortunately, the Caucus and its members have taken those all-important first steps to meet that goal. Two weeks ago, we met with Speaker Tom Foley about crafting a new, comprehensive, positive, bipartisan approach to child support enforcement, called the Child Support Responsibility Act of 1994. Speaker Foley has endorsed our efforts to move child support legislation through Congress this year. In addition, House Minority Whip Newt Gingrich has also lent his support for our efforts.

Clearly, the actions that we are taking to win the war on overdue child support enforcement and collect child abuse award payments could not have come at a better time. Despite some of the attempts by Congress to tighten and strengthen child

support enforcement laws, one thing remains abundantly clear: millions of American single-parents and children continue to suffer from the consequences of "deadbeat parents". At a time when approximately 25% of our nations' children grow up in single-parent households, the crisis of child support payments remains a heavy burden to bear. Consider that, for mothers who have obtained a child support order—and more than 40 percent have not been able to obtain such orders—either the father must voluntarily fulfill his obligation or the mother must bring a support action. Even among mothers who get awarded support, only half actually receive what is owed; the other half receive partial payments or nothing. Finally, approximately, $5 billion of child support orders are unpaid annually. These figures add up to significant burdens that have taken not just an emotional toll on these parents and their children, but an economic toll. and it is a price that our state governments are having trouble with as well.

Partial federalization of child support has been favored by numerous groups who believe that, while states have made great strides in streamlining the paternity process and modifying support orders, the problem of collection of child support awards requires a federal approach, particularly in interstate cases, which comprise almost one of three national cases. Since 1984, more than 12 studies have been completed by the General Accounting Office detailing the problems with the public child support enforcement system. Fragmented state enforcement has resulted in poor performance in interstate cases and failure to enforce existing awards.

A 1989 study by the Inspector General of the Department of Health and Human Services matched more than 65,000 absent parents who work for the federal government and who owe as much as $284 million in past due child support, with about $187 million relating to children receiving Aid to Families with dependent Children (welfare) funds. since the cost of providing federal and state benefits represents directly recoverable funds, there is an immediate incentive to expedite and streamline child support collection. also, collection of non-AFDC arrearages and providing regular child support payments would reduce the need for some families to seek or remain on public assistance. This study estimates only one billion dollars less than the $48 billion dollar figure for potential child support that could be collected annually that has been most recently cited by the Urban League. States are currently only collecting $14 billion annually from non-custodial parents, leaving a $34 billion gap, and with 15 Million cases and a growing caseload, there is a clarion call for reform.

So, clearly, there is a need to collect delinquent payments . . . clearly, there is a desire on behalf of states and parents to collect on those payments . . . but even more clearly, what we are discovering is an institutional inability to pursue child support payment cases because of a lack of leadership from the federal government, and because many state agencies lack the technical support they need to carry-out the follow-through in these cases.

Our bipartisan bill can and will offer the states the tools and techniques they need to strengthen their child support enforcement efforts. Our approach will also provide an opportunity for public education and personal and parental responsibility. Our legislation levels the playing field for all 50 states and the District of Columbia to be equal partners in this fight. Our approach seals gaps, and closes bureaucratic loopholes. Most importantly, the provisions contained in this bill will send a powerful but necessary message to deadbeat parents everywhere: you can run, but you can't hide, no matter who you are, no matter where you run to.

Provisions in our bill would ensure that the federal government does not—through its system of federal pensions and benefits—become an unwitting sanctuary or protector of deadbeat parents. Our bill echoes the recommendations of the U.S. Commission on Interstate Child Support and would waive sovereign immunity of the federal government in additional categories of benefits previously not subject to garnishment. These would ensure that the children of all federal workers, whether they are children of miners, military or civil servants, would receive their share of support from federal benefits.

The bill would simplify the child support enforcement process by not requiring a separate court order to attach the interest in any public or private retirement fund. Problems arise not only in obtaining funds, but in obtaining them in a timely and cost-effective manner.

In addition, our bill would establish a federal registry of child support orders an centralized state child registries. Under this system, W–4 forms would have child support information and employers would provide a copy of the W–4 forms would have federal child support registry for new hires, so that they could compare the information in a timely manner. The bill also would mandate state child support registries to maintain orders. It would mandate uniform state requirements for wage withholding and demand prompt delivery of payment.

Lastly, our bill would not allow anyone whose child support arrearages are greater than $1,000 or who is not in compliance with a plan or agreement to repay the arrearages to obtain a benefit, loan or guarantee from any agency or instrumentality of the federal government and would make any such individual ineligible for employment with the federal government. This is an extensive and broad-sweeping provision, which must be carefully reviewed in light of the fact that when someone is in compliance with a plan or agreement to pay arrearages, benefits and employment would not be denied.

Madam Chairwoman, what we are simply asking is this: that the federal government be subject to the same laws on child support enforcement that many state governments have initiated, to a great deal of success in most cases. Take my home state of Maine, for example. In Maine, deadbeat parents are walking out on $150 million in support payments every year. To stop this hemorrhaging of parental responsibility Governor John McKernan has instituted a program which revokes the drivers licenses of parents who are delinquent on their payments. Not only that, this program also revokes the licenses of doctors, lawyers, architects, plumbers, electricians and other professionals. And the State of Maine, which already has a central registry, is also requiring that employers sent the W–4s of new hires to its central registry. They make every effort to garnish pensions, whether private or public, and to garnish contested wills and estates. They would welcome a uniform law that would streamline the interstate enforcement process.

Perhaps if we can mirror on the federal level some of the progress and innovation that we are seeing on the state level, we can begin to ease and eventually lift the economic and emotional burdens caused by delinquent child support payments, and at last bring the justice, security, and equity that millions of single-parents and their children deserve.

Finally, let me just make one last comment on the bill that Representative Schroeder has already outlined for you today—the Child Abuse Accountability Act of 1994—concerning the garnishment of federal pensions for court-ordered child abuse payments. As a cosponsor of this critical legislation, I would like to add my enthusiastic support to her efforts. Already, federal pensions may be garnished for child support and for spousal payments—but not for child abuse payments, and I believe this two-tiered system of garnishment of federal pensions sends a not-so-subtle signal to both child abuse victims and their convicted abusers that child abuse may be a "lesser evil" than the failure to pay owed child support or spousal payments. And that is simply wrong. Passage of this timely bill, coupled, of course, with passage of the Child Support Responsibility Act will provide a twin-track approach to attaining our goals this year.

Thank you.

Ms. NORTON. I very much appreciate this very important testimony to lead us off.

I would like to ask the ranking member, who herself has been a leader on child support legislation, if she has any statement to make before I begin the questions?

Mrs. MORELLA. Thank you. Thank you, Madam Chair.

I certainly want to congratulate you on setting so expeditiously this hearing on this very important issue, the two bills that we have before us. If all Congress were run this way we would get a lot more accomplished in a more timely fashion.

Mrs. ROUKEMA. Hear. Hear.

Mrs. MORELLA. And I certainly want to congratulate my three colleagues who are before us as the first witnesses, who have been, again, such leaders in this area, Congresswoman Schroeder, Congresswoman Snowe, and Congresswoman Roukema, and also the witnesses that we are going to have before us, including Lorraine Green, the Deputy Director of the Office of Personnel Management.

The bill that Congresswoman Schroeder has introduced, H.R. 3694 permits the garnishment of Federal pensions if necessary to satisfy a judgment against the annuitant for child abuse, something really necessary. This issue has been the subject of a movie, I note, Madam Chair, and there are witnesses for and against the legislation.

The matter of false abuse charges is mentioned as a concern. However, if the plaintiff has been awarded a judgment, it is expected that the court has ferreted out the truth. The bill reads, "The term 'judgment rendered for physically abusing a child' means any legal claim perfected through a final enforceable judgment which claim is based in whole or in part upon the physical abuse of the child."

It is evident that the bill aims to make responsible all those who receive a Federal check. As you know, Congress just recently passed a law where the paychecks of Federal employees could be garnished for payment of outstanding bills to the same extent that private sector employees' pay may be garnished. That was part of our Hatch Act reform. And the bill before us today specifically goes to annuities to pay a specific judgment.

It is my earnest hope that there will not be many Federal annuitants who will be charged with child abuse. It certainly is a heinous crime, and, Madam Chair, as we know, money damages do not correct this wrong. The fundamental problem is still the repercussions of this crime. Prevention of child abuse must still be the goal.

It has been said many times that our children are our most vulnerable resource and most precious resource. They cannot protect themselves and so they rely on us. And in many ways this hearing is bringing out the fact that we have let them down. Our Nation's child support enforcement statutes are a patchwork of divergent, sometimes contradictory, always bureaucratic laws. Overworked or disinterested bureaucracies end up adding to, rather than relieving, the plight of single parents, and those who lose are our children who must go without the financial assistance that they often desperately need and rightly deserve.

In my State of Maryland, $200 million in child support is collected annually, but an additional $500 million remains delinquent each year. Incredibly, 330,000 child support enforcement cases are pending in the State, meaning that every case worker must handle 500 claims. Clearly, even the most committed of States cannot fulfill its enforcement responsibilities to our children, our families, in these circumstances. Our child support collection system is badly broken. It must be fixed.

The bill before us that we are looking at in terms of our jurisdiction, H.R. 4570—introduced by Congresswoman Schroeder, Congresswoman Roukema, Congresswoman Snowe, Madam Chair you are one of the sponsors of it, as I am, and many members of the Women's Caucus—is a starting point for strengthening our child support enforcement laws. I am pleased that it does include many of the recommendations of the U.S. Commission on Interstate Child Support; as was mentioned. Congresswoman Roukema served on the Commission. The legislation strengthens the powers and responsibilities of State collection agencies on various fronts.

And so, I also want to commend Maine for what they are doing. I was thinking as you commented on the fact that it would take away not only professional licenses, but driving licenses, it would, at least for the immediate moment, alleviate traffic on the road. We can then take care of the transportation system.

But today we will discuss the Federal Government's responsibilities in this domain, and in particular the proposed withholding of child support from Federal employees and retirees who are significantly in arrears.

And I look forward to hearing from our witnesses. And again, I want to thank our first panel of witnesses for their extraordinary testimony and leadership, continuing tenaciously and diligently.

Thank you, Madam Chairman.

[The prepared statement of Hon. Constance A. Morella follows:]

PREPARED STATEMENT OF HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Madam Chair, I am pleased to be here this morning to discuss issues of critical importance to our nation's children—the need to strengthen federal laws relating to child support and child abuse. I thank you for holding this hearing and I thank my colleagues—Congresswoman Schroeder, Congresswoman Snowe and Congresswoman Roukema—for being with us this morning. I also want to extend my appreciation to our distinguished witnesses, including Lorraine Green, Deputy Director of the Office of Personnel Management.

H.R. 3694, sponsored by Congresswoman Schroeder permits the garnishment of federal pensions, if necessary, to satisfy a judgment against the annuitant for child abuse. This issue has been the subject of a movie. I note, Madame Chair, that there are witnesses for and against this legislation. The matter of false abuse charges is mentioned as a concern. However, if the plaintiff has been awarded a judgment, it is expected that the court has ferreted out the truth. The bill reads, "the term, 'judgment rendered for physically abusing a child' means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical abuse of a child . . . ." It is evident that the bill aims to make responsible all those who receive a federal check. As you know, Congress just recently passed a law where federal employees pay checks could be garnished for payment of outstanding bill, to the same extent that private sector employees pay may be garnished. The bill before us today specifically goes to annuities to pay a specific judgment. It is my earnest hope that there will not be many federal annuitants who will be charged with child abuse. Child abuse is a heinous crime and, Madame Chair, as we know, money damages do not correct this wrong; the fundamental problem is still the horrific repercussion of this crime. Prevention of child abuse must still be the goal.

It's been said many times before—our children cannot vote. They cannot protect themselves, so they rely on us. In many ways, we've let them down. Our nation's child support enforcement statutes are a patchwork of divergent, sometime contradictory, always bureaucratic laws. Overworked or disinterested bureaucracies end up adding to, rather than relieving, the plight of single parents. Those who lose our are our children, who must go without the financial assistance they often desperately need—and rightly deserve.

In my state of Maryland, $200 million in child support is collected annually, but an additional $500 million remains delinquent every year. Incredibly, 330,000 child support enforcement cases are pending in the state, meaning that every case worker must handle 500 claims. Clearly, even the most committed of states cannot fulfill its enforcement responsibilities to our children, or our families, in these circumstances. Our nation's child support collection system is badly broken, and it must be fixed.

H.R. 4570, introduced by Congresswoman Schroeder along with Congresswoman Roukema and Congresswoman Snowe, and cosponsored by myself and many members of the women's caucus, is a starting point for strengthening our child support enforcement laws. I am pleased that the bill incorporates many of the recommendations of the U.S. Commission on Interstate Child Support, on which Congresswoman Roukema served, and that it strengthens the powers and responsibilities of state collection agencies on various fronts.

Today we will discuss the federal government's responsibilities in this domain; in particular, the proposed withholding of child support from federal employees and retirees who are significantly in arrears. I look forward to hearing from our witnesses on this important issue and working with you, Madame Chair, to ensure that our nation's civil servants are in full compliance with our nation's child support enforcement laws.

Our children deserve no less. Thank you.

Ms. NORTON. Thank you, Mrs. Morella.

As you stated part of what the child support legislation would do is to have the Federal Government catch up; and part of what it would do would be to have the Federal Government get in front. Both of those roles seem appropriate to me. I am just sorry the Federal Government has been so far behind. I can't imagine why, by the way.

Did the commission come to any conclusions as to why you would have such an exemption here? Is it the old notion that you shouldn't sue the Federal Government?

Mrs. ROUKEMA. I don't know that the Commission went into any great explanation as to how this inequity developed, but they certainly were very direct in focusing on the need to close the loopholes there and close the gap, and there seemed to be no hesitation at all on addressing that problem forthrightly. And quite frankly, I cannot account for it either.

Over the years that Ms. Kennelly and I, and Mrs. Schroeder as well, have worked on this issue, evidently it did not come into focus the way it certainly did before the Commission's deliberations.

Mrs. SCHROEDER. We don't—I don't think we have gotten—because, you know, they have to have conventions and vote and all of that, so you need some lead time. But I think that most Federal employees do meet their obligation, and I think that they get a little tired of the people who don't meet their obligation, and I can't imagine that they wouldn't be supportive of this.

I also think they realize that there is a real anger among the public if there are special things that Federal employees can hide behind that the public couldn't hide behind. So, I would be very surprised if any of those groups came forward and said that they would be opposed to this.

Mrs. MORELLA. I would too because they work very hard in trying to enhance the image of the Federal civil servants.

Ms. NORTON. If the gentlelady will yield, the Federal employee unions and employee organizations were invited to testify. Some will be submitting testimony for the record.

My recollection is that they did support the legislation we passed last year allowing garnishment of Federal workers, or at least certainly they didn't stand in the way.

Mrs. MORELLA. On the Hatch Act.

Mrs. SCHROEDER. Absolutely.

Ms. NORTON. On the Hatch Act reform.

Ms. SNOWE. I think also in this legislation what is important is the fact that the agencies have to respond more immediately, as opposed—to the current timeframe.

Mrs. MORELLA. There is a demonstrated need for both of the bills. Look at the startling comparison between the default rate between child support enforcement and the default rate on automobile payments. It is something like 3 percent for automobile payment default. And the default rate on child support payments is, I have heard, from 39 to 49 percent in terms of delinquency. So, that says something about where our values have been. So, it is time for us to move forward.

Mrs. ROUKEMA. It says something very sad about our values.

Mrs. MORELLA. Tragic.

Thank you. Thank you, Madam Chair. Thank you all for testifying.

Ms. NORTON. Thank you very much.

Ms. Snowe raised a point that perhaps you would want to speak to. There is the concern that the President's welfare legislation also includes child support provisions. This is a separate bill.

Do you believe that this bill should move forward right away without that bill? Do you believe that if it moves without that bill, that bill or any welfare bill will be harmed because there won't be that part in it for those who have a special interest in support legislation?

Mrs. SCHROEDER. Madam Chair, I have very strong feelings that we should do this, and we should do this now while we have everybody on board the train. This is a very complex bill, as you well know, that goes to seven different committees, and just getting that through and then getting States and everybody to start putting these pieces in place so it really becomes the law, it takes some time. So, let's get it done while we have got everybody in the corral, so to speak, right now.

I don't think you will get one more vote for welfare, pro or con, because it has child support enforcement in it. I think welfare is an entirely different issue about which people will make decisions when they see what the final package is.

But to me this is welfare prevention. And, if you take Congresswoman Snowe's statistics of $34 billion a year going uncollected and how many people that pushes then into the public welfare system, this could be welfare prevention. And then when we get to welfare reform, we can do that in a different manner. But we have got such a good consensus on this I think it will be terrible to lose the momentum and have to start over.

Ms. SNOWE. And we really need to buttress the State's efforts because there are limitations to what they can do legally in terms of crossing interstate boundaries in order to make these collections, and also for the other States to treat the child support order seriously.

The fact is another State can ignore the child support orders or they may require additional processes, if they so choose. At least we will establish national uniformity. This just begs out to be addressed at this point in time regardless of what happens on welfare reform.

Mrs. ROUKEMA. I would also like to put it in the context of this being a culmination of a 10-year effort, really. The breakthrough came 10 years ago when it was accepted by the Federal Government and the then Reagan Administration that this was indeed a national problem that required national interstate obligations.

The work that we are doing here is the consequence of 10 years of experience based on the principles that were established at that time as well as the recognition that we really have loopholes in the law that are partly bureaucratic, partly the need for streamlining, but also in part the need to take the next logical step among those principles that we have set down. We now have the experience of Maine and other States to show very definitely how it can be welfare prevention and really a saving to the taxpayers.

And there is no reason to hold this hostage for welfare reform. And I think that is what we would be doing, holding good legislation hostage, because there is probably no evidence that we can get a comprehensive welfare reform bill this year.

Ms. NORTON. I find your answers compelling. The fact that it is obviously related to welfare reform is no reason to require this very complicated piece of legislation to be attached to another very complicated piece of legislation, each of which in their own right require great study, time and effort. So I endorse your notion that we should pick up and run while we have got them running behind us.

And I simply want to say once again how important it was for the subcommittee to have you lead off this hearing. And I think I ought to say for the record as well when I am asked, "Well, what difference does it matter to have a Women's Caucus?" and, "Wouldn't you get some of those things anyway?" And some of the things that we are for, most of the things we are for have begun like this legislation and become national priorities. But I think you give the answer to that.

It was, in fact, the priority that the leadership and the members of the Women's Caucus gave to this issue that moved it along. Everybody is for it, but who was going to move it? Who was going to hang in there for 10 years? Who was going to say this comes before everything else?

It turned out to be, and I stress this, the bipartisan Caucus on Women's Issues. And for everybody who wants to know how this happened, that is how this happened. And the three Members you see before you are the leadership of how this happened.

I just want to thank you for very excellent and compelling testimony.

Mrs. SCHROEDER. Madam Chair, we thank you for kicking it off. And you have now issued a challenge to all the other committee chairman, and we hope that they catch up.

Thank you.

Ms. NORTON. Thank you very much.

I want to call the next witness, the Deputy Director of the Office of Personnel Management, the Honorable Lorraine Green. We are pleased to have Ms. Green once again before us.

We are pleased to welcome Congresswoman Schroeder, who I suppose I forgot to mention is also a member of the full committee and is likely to have great rank on the full committee, as another important breakthrough, next Congress. So, I am very pleased to welcome her to hear testimony for whatever time she can spend with us. She is not on this subcommittee, but she is a long time member of the full committee.

Ms. Green.

STATEMENT OF HON. LORRAINE A. GREEN, DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Ms. GREEN. Thank you, Madam Chair, members of the subcommittee. Thank you for providing this opportunity to present the Office of Personnel Management's views on H.R. 3694 and H.R. 4570, two bills concerning garnishment in cases involving children.

I would first like to address H.R. 3694. This bill would permit the garnishment of a Federal annuitant's pension to satisfy a court judgment against the annuitant for abusing a child.

OPM certainly agrees that an individual who has been convicted of child abuse should be held fully accountable for that wrongdoing, regardless of whether that person worked for the Federal Government or any other employer.

Federal annuities are by law already subject to garnishment for child support and alimony, and we note that the language of the bill is narrowly drawn to extend the current law to add only the circumstance of child abuse. In our view this limitation is appropriate, and the Office of Personnel Management therefore supports enactment of H.R. 3694.

Next, let me turn to H.R. 4570. This bill contains a variety of provisions to improve the child support collection system in our Nation. We are still in the process of reviewing this bill and we are not able today to take a definitive position on its provisions in general.

One provision of H.R. 4570 would bar any Federal agency from providing a benefit, such as a retirement annuity, to any person whose child support arrearages exceed $1,000 and who is not in compliance with a plan or agreement to pay the arrearage.

However, Federal annuities are already fully subject to garnishment for child support and alimony as well, including statutory provision for garnishment of additional amounts when there are arrearages. Therefore, the effect of the bill, by barring payment of a benefit from which a garnishment would be taken, would actually be to prevent payment of the child support.

This same provision would also bar employment with the Federal Government of a person whose child support arrearages exceed $1,000 and who is not in compliance with a repayment plan. Because Federal pay is also subject to garnishment for child support and alimony, with additional garnishment to cover arrearages, and because of the clarification given by the previous panel, I would like to revise my statement that was submitted for the record and state that this provision is appropriate.

H.R. 4570 would also alter the current provisions of law under which Federal pay and annuities are subject to garnishment for child support and alimony. As I stated, we are still examining these provisions to see what their implications are for the mechanisms that the Government now uses in processing garnishment orders for child support and alimony.

We note that the administration's proposal concerning the child support enforcement system, the Work and Responsibility Act of 1994, has been introduced in the Senate as S. 2224 and in the House as H.R. 4605. We urge your subcommittee to examine the administration's proposal with respect to overhaul of the child support enforcement system.

We are pleased to see improvements in the child support enforcement system and would be happy to provide further comments and assistance on these matters.

I am also available to answer any questions.

Ms. NORTON. I apologize that I was called away. I had read your testimony ahead of time.

Let me ask you, do you have any idea how many employees might be affected by the child abuse legislation?

We, obviously, are working off of a particular tragedy which we would hope would be most atypical. But it is in this city, in the District of Columbia, where I really see an epidemic of child abuse of various kinds, not necessarily this kind, but perhaps few with the consciousness to do what the sisters involved here do.

It is difficult for me to know what the effect of this legislation would be in the Federal service. Any advice you can give on that would be welcome.

Ms. GREEN. Yes. At this time, we are only aware of the one particular case that has been cited. We would have to work very closely with HHS to find some mechanism to put in place to track the retirees, track child abuse cases and that sort of thing. We don't have anything like that in place at present.

But we are very willing to coordinate and consult with HHS on finding some mechanism to put in place to identify any persons.

Ms. NORTON. Now, you don't have a definitive position on H.R. 4570?

Ms. GREEN. Only because we haven't had time to review the entire piece of legislation. You know, OPM is interested in the procedures for the employing agency in the child support enforcement process, and we want to ensure that we give this bill the necessary review, and we have not had fully an opportunity yet to do that.

Ms. NORTON. I accept that, Ms. Green, because this subcommittee rushed ahead to try to create a precedent for the six other subcommittees to get on with it, so I know you haven't. We introduced the bill just before we left on vacation.

But I have to caution you that I mean to abide by the schedule not of the House, not of the Congress, but of the women who have been working for 10 years on this legislation. So, we really do have the support, you see, across the Congress already. So, we would hate to go without OPM, but I am going.

Ms. GREEN. You won't have to go without us.

Ms. NORTON. So, if OPM wants any changes I want to know why and when. So, I am going to ask you when you think you could get a definitive position to the subcommittee; or do I have to myself suggest a period that the subcommittee wishes to receive your comments, your final comments?

Ms. GREEN. Today being the 12th, I think by the—if the end of next week is not too late for you——

Ms. NORTON. That is fine.

Ms. GREEN. That will give us ample opportunity.

Ms. NORTON. I very much appreciate that. If we set this pace and say that the Federal Government put this emphasis because we are the largest employer obviously, and if we can do it this will help the other committees to see that their part of the puzzle can also be worked out.

What percentage of child support garnishment orders that agencies are currently servicing are being fully complied with?

Ms. GREEN. In answer to that question, I would state that all the agencies are fully in compliance with the garnishment orders. There are some instances where some of the orders that come to the agencies don't have enough information to identify the person,

and the agency has to find the person, such as if at the Agriculture Department you had a John Smith and you had to go through that.

As far as the compliance, we are not aware of and have no reason to believe that there is any agency that is out of compliance.

Ms. NORTON. Now, obviously, the numbers affected by the child abuse legislation are relatively small. Let's look at the employees and retirees affected by the child support legislation. What do you have now and what do you expect, given this legislation, in terms of increased use?

Ms. GREEN. What we have in our records for the retiree garnishments for child support and alimony, though we don't have a breakout at present of which is which, is that about 2,000 retirees now have garnishment orders against them. And from an HHS report we find that there are approximately 70,000 garnishments of current employees, and that is for, again, child support and alimony. We will be looking to work with HHS to try to break that out further.

Ms. NORTON. Well, Ms. Green, you have the luck to come before us once again—if I recall, this was your luck the last time too—just as RIF's are being announced in OPM. And OPM, of course, stands out this way because we don't see RIF's rippling through the entire Federal Government. It makes us wonder if there is something wrong with OPM.

When was it first determined that additional RIF's associated with the revolving fund program deficit would be needed?

Ms. GREEN. This most recent determination was made based on our mid-June reports that we receive from the program managers.

Ms. NORTON. I am sorry. In mid-June?

Ms. GREEN. We received reports from the program managers in mid-June, and that is when we realized there was a serious problem in our training component that had not been anticipated, due to some courses and training contracts that had not come to fruition that we had counted on as revenue against our expenses for the revolving fund. This again is the revolving fund.

All of our RIF's, Madam Chair, have been the result of a revolving fund that has not been sufficient to support the staff that we have on board.

Ms. NORTON. Now, you are in a special circumstance because this revolving fund is in turn linked to agency needs. You, of course, assured the subcommittee that you would be applying techniques that would try to get more work for this unit.

I tell you, Ms. Green, perhaps it is because I am in the middle of a budget appropriation crunch for the District of Columbia, but your planning looks a lot like the District's planning in this. That is to say somebody is not forecasting work in time to take the necessary actions to avoid RIF's. And you know that RIF's are so disfavored by the Congress that we went to considerable lengths to pass buyout legislation.

So, the first thing I want to know is if you thought there were going to be RIF's, was there any way to include these or comparable employees in buyout legislation or to make adjustments and transfers so that buyouts would, in fact, help make up for what has turned out to be the need for RIF's?

Ms. GREEN. We did in fact offer and are still offering buyouts to the particular persons who are affected in the revolving fund. We also as early as last December put a freeze on hiring in these areas, and we have offered the early outs. Where we have had positions that are funded elsewhere in the agency, we have done reassignments of employees and we do have outplacement programs.

Ms. NORTON. Are you saying that 155 RIF's may not be necessary then?

Ms. GREEN. One hundred and fifty-five notices were given out. During the 60-day period we will be looking to find placements for some of those employees, and also persons who take early out will free up positions. It is an evolving process over the 60 days that may not lead to 155 persons being unemployed. That is correct.

Ms. NORTON. This is very important.

Ms. GREEN. Surely.

Ms. NORTON. And we are going to ask the agency to redouble its efforts and to be creative in its efforts. I take it there is a hiring freeze elsewhere in the agency as well, or is there not?

Ms. GREEN. That is correct, throughout the agency.

Ms. NORTON. And this committee would appreciate being informed of RIF's before we read it in the Washington Post. May I say that?

Ms. GREEN. Certainly.

Ms. NORTON. That I hope that there will not be another RIF at OPM where the chairman has to wake up and find it out in the Washington Post. That is a part of the problem here, it catches us this way.

It mentions transfers in the Washington Post as one way to accomplish the point, transfers within the agency. And may I ask if the agency tries to use other agencies? After all, you have jurisdiction in one way or the other over all other agencies. Are you aware of vacancies in other agencies that have to be filled when?

Ms. GREEN. We are aware of agencies that have vacancies, and we have been very successful, Madam Chair, from our first reduction in force with our investigations group, and some of the training group also, in making placements in other agencies throughout the country. We have been very successful in that regard throughout our regions. Yes, we are aware of that, and the Federal agencies have been more than helpful.

This success is also a reflection on the quality of our staff, and agencies realize this is not a punitive type of action, that these people are quality people. Where appropriate they have worked very closely with the FEB's, with the Federal Executive Boards, throughout the country, to place these persons.

Ms. NORTON. Could I apologize? My staff tells me that they knew over a week ago because OPM did call us to tell us that there would be RIF's. But I did not know it, so I will ask my staff to make sure that I know it when you know it.

But we have been on recess and this had not filtered up to me. I appreciate that you did make the necessary call.

Finally, may I ask, if you do your job as tenaciously as you can with transfers, with buyouts, with early retirements, is it conceivable that none of these 155 RIF's might take place?

Ms. GREEN. I don't think that that is conceivable, because I think our staffing pattern is still too high, and I don't think we are going to have the vacancies, given the budgetary cuts that we are going to have to take over the next couple of years, to absorb that many positions. Other agencies—and we are working very closely with them—may be able to assist us, but they are going to be going through some of the same difficulties as far as their budget is concerned.

I just don't want to be too optimistic. We are working more like around the 70- or 80-percent range with placements, all types of placements, from our first group. I think that is a very good record there, and we are still continuing with that first group. In addition to working with them, I anticipate that the numbers will be a lot smaller, and we can certainly give you an update on that first group so you can see the progress we are making.

[The information referred to follows:]

OPM Update as of August 5, 1994, on March 1994 RIF. Of 501 employees affected by the reduction-in-force announced on March 1, 1994, some 379, or 76%, had completed their transition as of August 5, 1994, through placement in OPM and other Federal agencies, employment in the private sector and State and local government, retirement, and other means, including those who returned to school on a full-time basis.

Ms. NORTON. I appreciate that.

Many agencies have more people wanting to buy out than they can buy out. Do you have fewer people taking advantage of buyouts than you anticipated?

Ms. GREEN. No. We are probably right on target. We will know better when we open the buy-outs for October 1. We were restrictive in our first set based on where we needed to offer them, in view of the monetary problems the last quarter of the fiscal year.

Ms. NORTON. But could some of these people being RIF'd be bought out?

Ms. GREEN. Can some of the people——

Ms. NORTON. Who received RIF notices be bought out?

Ms. GREEN. Some would qualify, yes, for buyouts if they are interested in that.

Ms. NORTON. Do you anticipate that announcements of RIF's encourage people who might not otherwise buy out to do so?

Ms. GREEN. Not if they are eligible for buyouts and would be RIF'd. For persons who are eligible for buyouts, more than likely it would be more advantageous for them financially to be RIF'd.

The persons who would want to help their fellow employees not be RIF'd, they are the ones more likely to take the buyouts and help save a job. Persons who are in that posture of a choice between a buyout and a RIF would have to look at it financially with the severance pay and that type of benefits, because you can get up to 52 weeks of severance pay in a RIF situation.

Ms. NORTON. This is important to note, that some of these people who have received RIF notices may desire to be RIF'd in order to obtain a greater amount from the Federal Government.

Ms. GREEN. That is correct.

Ms. NORTON. I think the Federal Government ought to look at that. I am not sure what the answer is, I am not sure where I come out, but I want to say I think it is dangerous. This was benevolent

legislation. You will have people who will say I'm going to make room for somebody else, but you make room for somebody else if you get RIF'd too.

So I'm not sure that that helps, and I'm going to see that the committee studies this to see if there are inequities here. I mean there are obvious reasons for the difference, and I just think we need to revisit those reasons to see whether or not we undermine our own efforts, which were to encourage buyouts. One of the reasons we encourage buyouts obviously is to save money.

So I am not trying to make buyouts more expensive, I recognize severance is a long time part of the Federal law, but this is something we need to look at if the Federal Government intends to follow the lead of the private sector, where the best corporations buyout because layoffs demoralize people so. But if there is a competition here in this way, we need to find out more about that, and the staff will look into that.

Mrs. Morella.

Mrs. MORELLA. Ms. Green, can you just tell me, this year, the reduction in employees at OPM. Just give me the total figure, whether it is the buyout, whether it is the reduction in force, just during this year, offhand, and how many it leaves you with.

Ms. GREEN. We have had close to—I'd say a reduction of close to 1,000 employees. I would say between 800 and 1,000 employees in one way or the other, as you say, in those different categories.

Mrs. MORELLA. In this year.

How many does that leave you with now?

Ms. GREEN. We have close to 6,000, in all funds.

Mrs. MORELLA. So about one-sixth so far, and it will be one-fifth before you finish in terms of the reductions. That is tremendous, more than any other agency.

But now with regard to your testimony today, I was very pleased in looking at H.R. 4570, you indicated that, unlike the written testimony I had before me, that you did feel that the provision with regard to the person who is in arrearages of $1,000 or more and is not in compliance with a repayment plan could also—would have employment barred. You decided that you were going to support that, right?

Ms. GREEN. Yes.

Mrs. MORELLA. Good. I am pleased to see that.

Then, as you mentioned the need to look closer at the child support bill, you also mentioned the bill that is the administration's proposal.

Ms. GREEN. That is correct.

Mrs. MORELLA. Could you just tell us in general maybe how it differs or what it does that you think is particularly good. In other words, could you enlighten us a little bit on it?

Ms. GREEN. As far as the reform of the welfare system—and I think the previous panel discussed the differences there—this is a total reform piece. As far as the current garnishment procedures, though, the administration's proposal essentially maintains the current procedures for the Government as an employer in processing garnishment actions, and this is what we are looking at on H.R. 4570. We know that our current procedures are working, and we know that the agencies are in compliance. We want to make

sure that the opportunities for collection under this new bill are increased, which is the intent of the bill, and we don't want to make it any more complex or cumbersome on the employing agency so that there is any lack of compliance.

To answer your question, the administration's bill essentially does not change the current procedures for the employing agency in handling garnishment actions.

Mrs. MORELLA. You say, "We urge your subcommittee to examine the administration's proposal with respect to overhaul of the child support enforcement system." I just didn't know whether it had something there we should know about that we didn't know about and you would enlighten us.

Ms. GREEN. Just the procedures that we do find very enforceable by the employing agency.

Mrs. MORELLA. Well, I think you may find that to be the case with this bill also, and we hope to move it forward.

Ms. GREEN. We certainly hope so.

Mrs. MORELLA. Thank you. I have no other questions for you. Thank you for coming, Ms. Green.

Mrs. SCHROEDER [presiding]. Thank you. And I want to thank you too, Ms. Green, for coming.

First of all, I think there has been a lot of historic things go on here today. I don't think I have ever seen a chairperson say, "Well, we did find out, and I apologize, they just didn't tell me, we have been on break." That is amazing.

But also, you are listening to our testimony on the support bill. Very rarely do witnesses listen to other witnesses. So I am very impressed that you did that.

Ms. GREEN. Thank you.

Mrs. SCHROEDER. It is very clear, and you picked it up, that all we are trying to do is make sure we have the most possible teeth in this, and as you look for your final read on it, you might look back to this U.S. Commission that studied it for all these years because we really tried to codify some of their recommendations, and our point about being in arrears as being a barrier, as you heard so well, is really just to make sure they sit down and work out a plan and they understand the plan and they get it from day one that the Federal Government doesn't see that as anything but a very serious abrogation of their parenting duties.

So I appreciate your listening, and if there is any more information you need as you make this decision by next week or your read by next week, be sure and let us know because I think it is important to move this as fast as possible.

Thank you also for your help on the abuse bill. I just find the facts of that case so despicable, and hopefully there aren't a lot of others like it. But again, there is absolutely no reason that the Federal Government can't be a leader on this and never be a condoner of that type of thing.

So thank you very much, and that is all I have to say, Madam Chair.

Ms. NORTON [presiding]. Thank you very much, Mrs. Schroeder, and thank you, Ms. Green.

Ms. GREEN. Thank you.

Ms. NORTON. I'm going to ask Ms. Sharon Simone and Ms. Joyce Seelen to come as the next witnesses, and I'm going to ask Mrs. Schroeder to lead us in the questioning of these witnesses.

Mrs. Schroeder indicates that the problem involving her child abuse bill may not be widespread, or she hopes it is not as widespread. What is really important, I think, is that this was not an instance that got overlooked but Mrs. Schroeder saw that the way to prevent it and to present it being more widespread was to bar it. So I thank her very much for that, and I want to begin by asking Ms. Simone if she would begin.

STATEMENTS OF SHARON SIMONE, CHILD ABUSE SURVIVOR; AND JOYCE SEELEN, ATTORNEY, HOLLAND, SEELEN & PAGLIUCA, DENVER, CO

Ms. SIMONE. Hi. Thanks for having me here.

First I have to get used to this microphone and this whole setting. It is very formal.

I grew up believing in the law. My dad, Edward J. Rodgers, Jr., was an FBI agent, eventually a special agent in charge of the FBI in Colorado Springs, CO. He was a skilled agent. He was often called in by his superiors to crack a really tough criminal. He had a reputation, he could get a confession out of anyone.

By the way, I loved my dad and I still do, and it is—on the side here from my testimony, it is very emotional to come and talk like this, and it is really important to me that I do it for myself and for other people, and I want it known that even if you are abused you still love your father, and to come to the place where he gave 50 years of his life is hard and it should not be a secret, and it is real hard to tell on him right here in this room.

Ms. NORTON. And you are very courageous for coming forward. You know that.

Ms. SIMONE. Thank you. Thank you.

It is just sad. It is sad to have to come to the place where he gave his whole professional career. It really is. I will pull myself together here, not to worry.

Ms. NORTON. Take your time.

Ms. SIMONE. I used to not be able to feel. That was one of the consequences of the abuse. I had shut all my feelings off. Now I can cry, and I am very grateful for that, so I don't want anybody to worry about me, and I would like some water.

Dad believed in the law too. He gave 50 years of his life to law enforcement. After he retired from the FBI at 50—my age now—he spent 20 years as the chief investigator for the DA in Colorado Springs, CO, and in that capacity he developed a specialty in child abuse and incest prevention and intervention. He spoke all over the country to DA's, to pediatricians, to legislators, to social workers, nurses, police officers, to anyone who would listen, and he published in this area.

Dad rigorously held criminals accountable for their actions. He also hated for kids to wet their beds or to have their hair combed wrong or to have dirty hands. He was very particular about the tone of voice or the inflection you used when you spoke to him. It seemed no one but me got it right very often. My brothers and sisters, he said, were insolent, they were defiant. By that he meant

they didn't say, "Yes, Dad," just right. I saw them trying hard to get it right, but there was such a narrow range of acceptable deference that would satisfy him.

Dad's FBI skills spilled all over into our house. For instance, if one of his tools was missing, he would holler at his kids, "All right, you little bastards, line up," and so we would line up, and he would say, "Which one of you took my screwdriver?" Lineups were always a disaster. We lined up for years, and someone always got beaten in the process of a lineup.

One of the last times I remember lining up, I was 17. Dad gathered all of us kids in the garage outside of our house. My sister Sue was 15, Beanie was 13, Eddie was 9, John 7, Steve 5, and we all had to watch while dad broke a board over Steve because he had ruined films of our family in the early days. He had been playing with them in the garage.

We lived on an acre outside of town in Colorado Springs. There was a large circular, dusty, gravel driveway, four huge yards with floodlights on poles 30 feet high and 32 trees that lined the property. Saturdays, dad and I would walk the lawns and mow them together. Really, I would look for sticks and stones that were in his path. I was afraid he would be hit. I walked alongside of him, and I would try to distract him from the sticks that were on the ground because that would mean that my brothers hadn't picked them up just right and he would go and find them and hit one. So I was like a human decoy. I would distract him and chat about his life, his work. I found out a lot about communists, I found out a lot about the work he was doing. I tried to distract him so he would forget about the other kids.

When he was at work I would marshal the kids. I would order them around to get them to do the watering of those huge lawns because that was a daily chore we were assigned from spring until fall after school or on vacations or weekends, and my brothers and sisters never would do the watering, they just wouldn't do it, unless I got after them. They would wait so long that dad would come home in his FBI car and walk the yards, and he would walk around, and he would feel the ground with his feet, and if it didn't squish just right, he would go find a kid and he would hit one of them.

I didn't get hit after I was 2 years old, and I was bossy. My brothers and sisters didn't like me because I was bossy. They hadn't heard because mom never told them, and she never told me until I was 38, that I had been beaten until I was 2½. So the kids didn't like me.

The reason I was bossy though wasn't just because I was the oldest kid, that was part of it, but I was really scared that someone was going to get hit. I have told this story so many times, I cannot believe that I am so emotional except for the fact that it is where my father worked.

Ms. NORTON. That is perfectly natural.

Ms. SIMONE. I appreciate the patience.

If anybody worries about me, I'm going to be mad. I don't like you to think I am falling apart, because I am not.

OK. I was scared someone would get hit, so I would order them around. My stomach was in knots all the time, and I felt as if I was drowning.

We grew up in a drought. Out in Colorado there were rationing laws in force all of my childhood. Daily we heard on the news about the water shortage, how serious it was. Rules for watering were posted all over the place, and yet dad was having us water all the time, and I knew we were breaking the rationing laws.

I was a kid of 10 or 12, and I was a wreck about these rationing laws and worrying that we were breaking them, and one hot summer day when I was 12 I walked to the side of the road—that was East Platte where we lived—and I looked really far down that long dusty highway as far as my eyes could see, and I tried to make telepathic contact with the man who was in charge of catching people who abused the rationing laws. I kind of called out to him from inside of my brain. I couldn't talk then, but I wanted him to hear me. I wanted him to come and stop dad from watering. That is as close as I could come back then to letting myself know that what was going on in our house was child abuse and that it was against the law. I wanted dad to be stopped.

Never once as a kid in my bed at night did I ever think, "Why is dad beating everyone?" Why did the dark talk to me when I was 4 in my bed and say, "You won't feel this way again until you are married"? Why was I having an orgasm in my bed that night? Why is dad pushing mom all around and saying he is going to kill her?

Well, that watering man never came, and mom didn't stop dad either.

After a beating, one of my sisters would say, "Mom, why don't you just go tell the police?" And she instead would take a carful of us to the A&W root beer stand, and she would buy us all Frostie root beers, and she would say, "If J. Edgar Hoover"—I think I know this man, by the way. I feel I have lived with him my whole life, J. Edgar Hoover. I don't like J. Edgar because he was going to get dad in trouble. Anyway, "If he ever, ever found out that your dad had been arrested by the police, we would lose the pension." And so I have long lived with this pension. No one ever said no to dad without getting beaten for it.

My life was shaped by family violence. Some day I would have to reckon with the profound impact this had on me. Never, though, did I expect that I would damage my six children by the extensive emotional sequestering away I did of my childhood. Never did I expect it to affect my marriage the way it did. Never did I expect it to rob me of my ability to feel, my ability to hold my children and to feel and connect with them. Not until three of my children were seriously suicidal and one in a battering relationship did I begin to wake up.

In August 1989, my sister Sue and I filed a civil suit in Denver district court against our father for protracted childhood physical, sexual, and emotional abuse. In his deposition of March 1990, our father, in answer to the question—actually, to Joyce's question here, who was my attorney then and now—"Do you think what you did to your children was child abuse, Mr. Rodgers?" And he answered, "I considered myself a domineering son of a bitch with a

terrible temper, but no, I don't think what I ever did rose to the level of criminal abuse."

On May 16, 1990, Judge William Meyers directed a verdict that said we had proven all our allegations, that dad had committed incest with his daughters and tormented his children with consistent emotional and physical acts that far exceeded acts or normal discipline, and a jury ruled that the statute of limitations hadn't run, that Sue and I had yet to come to understand the full nature and extent of our injuries.

Dad never showed up for trial. He fled the country to avoid paying the judgment, but he is now back living in Canyon City, CO, right next door to where my brother Ed is a district attorney.

My three brothers are irate with my sisters and me. They say, quote, "this should have been settled around the kitchen table, not in public." They say the sexual abuse never happened.

In recent depositions, my father and all three of my brothers said they do not believe the judgment to be valid. All my brothers and one of their wives have been signing my father's Federal pension checks and Social Security checks amounting to over $4,200 a month, letting him use their accounts to cash his check since 1990. My father has no bank accounts deliberately to avoid paying the judgment.

A few weeks ago, in his deposition regarding his nonpayment, noncompliance of paying of the judgment, dad was asked if he felt the judgment to be valid. His answer was no. And I think it is important for you to hear his exact words on this. "I have problems with the statute of limitations. I have problems with the discovery. I have problems with perjury. I have problems with the selection of the jury." He didn't like it that it was all women. "I feel it was totally discriminatory in nature. I have problems with my representation, and I object to the fact that the judge did not grant a continuance."

After this litany, he was asked by my attorney whether he was going to begin making payments on the judgment, and he said, "Absolutely not. I have no intention to ever pay this judgment."

So the position of being unwilling or being above the law that dad and my brothers have taken is not new, but the extent to which they are willing and able to go to defy the law is not new. First it was in our home, but now dad can defy the courts, and my brothers are helping him.

Not many families get to test the limits of that position that what happens in the family is private and sacrosanct. Dad just won't comply. He held criminals accountable, but he won't be accountable. In fact, it seems that when it comes to family matters, "that should be settled around the kitchen table," that is the only law that applies.

Well, many kitchen tables in this Nation are unsafe forums for discussion. I took my dad to court because I believed and respected the law and I believed he would meet me on his own turf. I used the legal system because I needed and wanted the protection of the law. I still believe in the law. I grew up believing that there were limits somewhere to atrocious human behavior.

The attitude that the law applies only to someone unless you agree with it is most frightening to me. It is what allowed my dad

to beat all of his children and sexually abuse four of his daughters. It seems now there are no limits in place for my father. There never were. He could do what he wanted when he wanted and how he wanted it when it came to his family, and now he can do it with the courts too. So he is making a mockery of our legal system, in my mind. He is still doing what he wants. In fact, he is the law, and it looks like unless the pension laws are changed he can get away with it and others will have to continue to pick up the tab for the damages he caused. In effect, he has paid no consequences for his child abuse.

I really believe we need to protect the family, even the family's privacy, I really believe in that, but when there is someone in the family that abuses power to the extent that human life and spirit are threatened, then we need to be able to call upon the law for help.

So coming to Washington, I feel like I am gathering around a bigger, safer table than the one I grew up around. I am advocating for a change in the pension laws so that dad's pension could be garnished. Dad's pension hung over our family like a hatchet. It was the threat of loss of it that kept my mother from reporting him.

The effects of abuse have been extremely costly to me emotionally and financially. It takes really long-term therapy, which is very expensive, to undo this kind of damage. I really feel like I am way out of the woods now, but it has been since 1986. That is a lot of money. It is 200,000 dollars' worth of bills to therapists that aren't paid by insurance.

But equally important to me today really is the bigger issue. In 1992 I heard that the then Secretary Sullivan declared that child abuse and neglect was a national emergency. When I heard him say that, I thought, God, I would like to go to Washington and say to the Government policy makers and legislators, Are you willing to be accountable too? Will you search every law and policy you have on the books and any place where you see that a child abuser is being protected? Will you do something about it?

It looks like today, from what I have heard, there is an awful lot being done about it. It is very exciting and very heartening. I really do hope there is a higher law than that family law that is in place in my family and really lots of families. Most families operate under this family law, that what goes on in the family is the family's business. Well, it nearly killed me and my sisters and brothers.

I think that the last thing I want to say is that, coming here, I am thinking about myself as that 12-year-old kid walking down looking at that road, looking for the water patrol man to stop dad, and I feel like I want to respect that part of myself and say, you know, I looked down the road and it ended up in Washington. I think that the man who I was figuratively looking for was the Federal Government, and I think I have found that man, and, ironically, there were two women that walked up the road for me too, and one was my attorney, Joyce Seelen. She took my case without really any hope, rare hope, that there would be any compensation, and it changed my life, and so she walked up the road, and she is not a man. I want to acknowledge her.

And Pat, you—Pat Schroeder—for listening, for hearing both the kid in me that says, "Can you stop dad? Will you try to stop him?"

And I really feel like you are trying to stop him, and that really counts, so thank you very much, and thanks for all your attention, and I do want to do this official thing of saying put this in the record, please.

Ms. NORTON. Absolutely. So ordered.

Ms. SIMONE. Thank you.

[The prepared statement of Ms. Simone follows:]

PREPARED STATEMENT OF SHARON SIMONE, CHILD ABUSE SURVIVOR

I grew up believing in the law.

My Dad, Edward J. Rodgers, Jr. was an FBI agent, eventually a Special Agent in Charge of the Colorado Springs, Colorado FBI office. Often I went to his office with him on a weekend while he caught up on his paper work. I'd spend hours studying the bulletin board in his office where the prison photos of the nation's top ten criminals were posted. I'd read the text with the photos over and over. I learned about federal crimes, the use of aliases to escape detection, the degree of danger each criminal posed.

I was so proud of my father. He was risking his life to protect society from these dangerous people. He went out in the dead of night and did surveillance's. He had informants who gave him tips on the whereabouts of wanted men. He was a hero to me. I worried when he left the house that he would be shot and never come back. And I didn't think I could ever live without him. I reassured myself. He was one of the few men in the FBI at the time ever to achieve something called "a possible". During firearms practice he hit every target—out of "a possible" number of rounds to be fired from many different positions—he got them all. His name is on a plaque somewhere in the FBI office in Washington for this achievement. He could protect himself. He knew the ins and outs of the criminal mind and behavior. He was a skilled agent. On many occasions he was called in by his superiors in the FBI to crack a really tough criminal. He had a reputation for being able to get a confession out of anyone. He believed in the law; gave 50 years of his life to law enforcement—first as an FBI agent and then as a Chief Investigator for the District Attorney in Colorado Springs, Colorado where he developed a national reputation for his work in Child Abuse Prevention and Intervention. He vehemently disliked criminals and did his utmost to see them prosecuted.

Dad also hated for kids to wet their beds. Or have their hair combed wrong. Or have dirty hands. He was very particular about the inflection or tone used by any one of his children to answer him. It seemed no one but me got it right very often. My brothers and sisters, he said, were insolent or defiant. By that he meant they didn't say "yes, Dad" with the correct tone and look on their faces. I saw them trying hard to do it right. But, there was such a narrow range of acceptable deference that would satisfy him.

Apparently, I had it down just right. He never beat me again after I quit wetting the bed at two. I had lived my life in the Rodgers family as the oldest child believing that I had never been hit by my father—that I was his favorite. When I was 38 years old I asked my mother about a memory that had come to me. I described the bedroom I was in, the light under the door and my terrified screaming for an endless period of time. I was trying to reach the door knob and open it. My hands were too small to turn it enough to open it. I was screaming for my mother. I had to pee and I was terrified that I was going to have to wet my pants and the floor. I remember being scared that I would pee my pants. The terror was not of being alone in the dark crying out for help. My mother said: "My God, that was in our Jackson Heights, New York apartment. You were probably 20 months old. We used to play bridge across the hall with neighbors. We left both doors to the apartments open. I must not have heard you. You were probably terrified because your father used to beat you for peeing the bed at night. You quit at about two." I had not remembered the beatings but the terror was incredibly real. I felt it in my body. I can see the puddle on the floor. I gave up and wet myself and crawled into bed. At two, I was afraid of my father. Afraid enough to not even notice that I was alone. So, it wasn't true that I was never hit like Mom always said to me and my brothers and sisters. It wasn't true that I was not afraid of my father like I'd always thought. I just linked up all my terror with peeing my pants, not with the consequences of that, which was Dad beating me. My body remembered Dad's rules.

That same conversation with my mother where I learned why I was afraid of wetting my pants, my mother told me, in fact, I was the first child my Dad had abused. She told me Dad threw me across the room at 10 months of age and hurled me into

my crib for crying. My mother stood over me shaking and said to herself: "My God, what have I done in marrying him. Did he break her neck? I should leave him."

My mother stayed. She got pregnant with my sister Susan. As a young girl of ten, Mom told me Dad was very possessive from the start of their relationship. He had a bad temper. He would become irate if she glanced at a man walking down the street. He was also jealous of the attention she gave to her babies. She learned that when he threw me because she was trying to comfort me when I was crying. She also believed she married my father to save his soul. She would be the one to tame him. She believed that before she ever married him; before he ever hit her; before he ever hit or molested her children. She believed God wanted her to stay and obey Dad. Submit to him. When he beat my sister Susan's legs black and blue for crying when she was six weeks old, my mother hardened herself, became fiercely attentive and vigilant with Sue and left me to my father. And she raged at me for the special attention he gave me, meaning that he didn't beat me. She said that by the time I was two, I was really "playing up" to my Dad. She said she was jealous of the attention he paid me. What I was learning by "kissing up" was that crying, peeing, talking, moving, breathing, sleeping, belonged to Dad. I belonged to him body, mind and soul.

I was that young when I soaked in through my pores all Dad's rules for not being defiant or insolent. Don't cry. Mind Dad. Fuss over him. Wait on him. Talk very nice to him. Find out what he wants. Keep the babies from crying. Worry about Mom. She cries and is sick all the time. Obey. I would.

Dad's FBI skills spilled over into how he ran our home. For instance if one of his tools was missing he'd holler. "Alright you little bastards, line up." By this time there were six of us Rodgers kids living on East Platte—a secluded area off Highway 24 in Colorado Springs. We'd run from all four corners of our house to line up. He'd be breathing heavy, pacing and questioning us one by one, boring his eyes into ours. "Which one of you took my screwdriver," he'd demand? Along with this question, another layer of trouble unfolded. How the question was answered was as critical as where the screwdriver was. You had to program yourself to leak out the answer in the most modest, clear, even tone possible in order to not appear insolent. You always had to remember to include the word "Dad" somewhere in the sentence. He was always testing two things at once. Your respect of him (measured by tone and facial and body demeanor) and the real answer to where his screwdriver was.

Lineups were always a disaster. Every kid in the lineup would be holding their breath back and hoping someone would "tell the truth". The trouble with telling the truth was that someone would get beaten whether the screwdriver's whereabouts was known or not. A "no or a yes" answer both got a beating. So did an improperly delivered response earn a beating. Dad had plenty of raw evidence for a beating any time he called a lineup. Someone always "got it." Dad was ruthless in his questioning. He always said he could "smell a liar". It was his business.

After Dad hit a kid, it was my business to fuss over him, make him know that he was loved so he would stop being so angry. If he wasn't so angry, maybe he wouldn't hit. I'd offer him a sandwich and a beer. He'd accept and whistle off to read the paper.

We lived outside of town on an acre of land in a Spanish-style stucco home. There was a large circular gravel drive and four huge yards with flood lights on poles 30 feet high. Thirty-two trees lined the property. Dad and I mowed the lawn together Saturday's. Really, I would walk beside him scouting for sticks and stones that were in his path. I didn't want him hit with one. He handled the red gas-fired mower. I handled him. He was lonely. No one liked him. The more the family ignored him, the madder he got I figured out. So, I determined to stick by him as much as possible. Hang out and ask him questions about his work. Mow the law with him. Tell him how great I thought he was. What a good singer he was. Make him know somebody loved him. I caught his night crawlers for him. Cans full of fat, squirming fish bait. He hated to catch worms. And when he was at work, I would marshall the kids to get them to do what he had ordered to be done in his absence. Watering the four huge lawns was a daily chore from spring until fall. So was picking up the sticks in the yard in preparation for the mowing session on Saturdays. My brothers and sisters would never do these chores on their own. I always had to order them around to get them to do it. I couldn't do the whole job by myself. They'd wait so long to get going that Dad would show up before the job had been finished. He would get out of his FBI car and walk the yards to feel how wet the ground was. If it didn't squish beneath his feet, someone would get hit. If there were sticks lying around someone would get hit. I was always close by trying to distract him.

My brothers and sisters didn't like me. I didn't get hit and I was bossy. They hadn't heard that I too had been beaten as a young kid. Mom never told them, or anyone else. I wasn't just bossy though. I was also scared that someone would be

hit if the work hadn't been done right. That's why I kept after them. My stomach was in knots all the time. I could hardly breathe. Air just wouldn't fill my lungs deep enough. Lots of the time I felt like I was suffocating.

We grew up in a draught. There were rationing laws in force all through my childhood in Colorado. Daily in the news and on the radio we heard about how short the water supply was; how intractable and serious the draught was. Rules for watering were published everywhere. We were breaking the rationing laws on a daily basis. One hot summer day when I was twelve, I walked to the side of the road that was East Platte and looked down that duty highway for as far as my eyes could see. I tried to make telepathic connection with the man who was in charge of catching people who abused the rationing laws. From inside my brain, I sent a message to that man, whoever he was, wherever he was, that he should come and catch Dad. I wanted him to stop abusing the rationing laws. That is as close as I could come then to letting myself know that what was going on in our house was child abuse and it was against the law. I never once, as a child in my bed at night, thought: "Why is Dad beating everyone? Why did the Dark talk to me in my bedroom, in the night, when I was four and say to me: "You won't feel this way again until you are married." Why was I having an orgasm in my bed that night? Why is Dad pushing Mom around and saying he was going to kill her? All I could say to myself in the form of a inner plea was: "Man who stops people from abusing rationing laws, I'm here calling out for you. I can't say a word. I can only think this and hope you catch the message from my brain to yours. Come by our house and stop my Dad, he's watering the grass too much." He never did come.

Mom didn't stop Dad either. Often after a severe beating one of my brothers or sisters would say: "Mom why don't you tell the police on him." Instead, she'd take a carfull of us to the A & W Rootbeer stand and get us frosty rootbeers. She'd say: "I can't tell the police. If J. Edgar Hoover found out that your Dad had the police come to the house because of his beating you, he would lose his job . . . he would lose his pension."

I said "no" twice during my childhood. Once when I was ten and my Mother asked me to ask Dad to stop drinking for good. She said her sister had asked her Dad to stop when she was my age and her Dad did. She was sure my Dad would stop if only I would ask him. We were all sitting outside the house under the stars on a blanket this particular night. We had six kids by this time. Dad was inside drinking. I froze inside when Mom asked me to do this. I *knew* I couldn't do it. For one brief instant I let myself know what I was desperately trying not to know . . . that I was "kissing up to Dad" so I wouldn't get hit. It was a fleeting recognition. What I said to myself was: "I can't do that." Dad will then think I am against him to." I couldn't say the words: "And then he'll hit me too." But I felt the sentence shape itself beneath the line of demarcation I had drawn emotionally between what I could know and what I couldn't. For an instant that line was eclipse. I remember it clearly. I felt ashamed of myself and terrified of the consequences of either choice. Saying "no" to Mom's request meant I was preventing Dad from sobering up . . . she said he would do it for me! I think I believed her. But the price was too high and I said "no, Mom, I can't do that." And the price for that "no" was a further erosion of the nearly non-existent emotional connection I had with Mom. I did a lot of housework and baby-tending. But I had almost no human connection with Mom. I think Mom believed if Dad quit drinking he wouldn't hit the kids. Trying to get him to stop drinking was her focus. I wouldn't help. I am still feeling the aftershocks of that decision. I should never have been asked. But I was. And it had a terrible impact on my mind and soul and body.

The second time I said "no" I was nineteen, just a month before I went off to college. Dad and Mom were having an argument in the living room. Dad had been "stalking" Mom around the house like he often did . . . fists clenched, jaw set tight, black eyes locked intensely on her. "Get in that bedroom, Dorothy or I'll kill you." I was standing in the space between the two of them and I had to do something. "No you're not going to kill her, Dad." Dad threw his eyes on me like he was casting dice and meant to win that showdown. "What did you say," he whispered in disbelief and white rage? I repeated myself. Mom ran out the front door and Dad came after me. I ran out into the night. I didn't know what I was going to do. I had "blown my cover." For an instant I risked my protection and tested my relationship with Dad. Did I have any special sway over him? I did learn in that brief encounter, that Dad would hit me too if I crossed him. Later, Mom came to me and said: "I couldn't believe you said that to your Dad. I never thought you'd say anything in my defense. I've waited years for you to do this."

Shortly after I confronted my father, I stopped eating and lost so much weight I was hospitalized for anorexia of unknown cause. Back then I never related my body's response to this encounter and my role in the triangle and in the family. I

now know that it wasn't my job to stop Dad or to help Mom in this way. It wasn't my job to try to keep Dad loved so he would stop hurting Mom and the kids. *I was a kid.* And, I *was* in this position.

My life was shaped by family violence. I never knew that anything bad had happened to me because I was never hit—never that I remembered consciously at least. Someday I would have to reckon with the impact my childhood had on me. Never did I expect that I would damage my six children by the extensive emotional sequestering away I did of my childhood experience. Never did I expect it to impact my marriage the way it did. Not until three of my children were seriously suicidal did I begin to wake up.

In August of 1989, my sister Susan and I filed a civil suit in Denver District Court against our father for protracted childhood physical, sexual and emotional abuse. In his deposition in March of 1990, our father, in answer to the question: "Do you consider what you did to your children child abuse?", he answered: "I consider myself a domineering son-of-a-bitch with a temper, but no, I don't think what I did ever rose to the level of criminal abuse." "You don't consider throwing one of your son's into the air and punching him in the stomach so hard that he messed his pants, child abuse? What would you consider child abuse?" His response was: "Oh, welts, marks, bruises, things of that nature."

On May 16, 1990, Judge William Meyers directed a verdict that said we have proven allegations against our father. He said that Dad had committed incest with all four of his daughters and had tormented his children with "consistent emotional and physical abuse . . . acts that far exceeded acts of normal discipline." A jury ruled that the statute of limitations had not run . . . that Sue and I had yet to come to understand the full nature and extent or our injuries. I was awarded 1.2 million dollars in damages. Sue was awarded 1.0 million dollars in damages. Our attorney, Joyce Seelen in closing stated: The injuries went way beyond the beatings. They went way beyond the sexual abuse . . . . The horror of what happened to these women has kept them from being able to feel the extent of their injuries."

Our case story was widely publicized because it was one of the first successfully tried cases of adult survivors of child abuse bringing suit against a parent long after the actual abuse occurred. The jury award may have been the largest of its kind up to that time. Our case opened doors for other survivors to come forward and use the courts to gain redress of the ravages of childhood abuse years after the fact. It was picked up by the press nationally also because of my father's reputation as a Child Abuse expert and because he was a well-respected FBI agent and law enforcement officer of over 50 years.

Dad never showed up for trial. He fled the country for a long period of time to avoid paying the judgment. He is now back living in Canyon City, Colorado where my brother Ed is the District Attorney. My three brothers are irate with my sisters and me. "This should have been settled around the kitchen table, not in public." They say the sexual abuse never happened. In recent depositions of my father and three brothers and my brother Ed's wife, they all said they did not believe the judgment to be valid. They all stated under oath that they would do nothing to facilitate my father becoming accountable to us by beginning to make payments on the judgment. All of my brothers and my brother Ed's wife have been signing my father's pension and social security checks and letting them use their accounts to cash these checks . . . for four years. My father does not have any account anywhere. When my brother Ed was asked why he thought Dad didn't have a bank account he said: "I think he probably doesn't want it garnished or attached or something like that. I mean, that's sort of logical, isn't it . . . especially when he feels it is unjust?" When my attorney questioned him further by asking him if he felt there was any criminal law he was breaking by his conduct, he answered: "Not a one. I didn't cash the checks. Have you got that straight?"

"But you helped him cash the checks, right?"

"No I didn't help him cash the check. He cashed it himself. I signed it and let him use the bank that I'm at . . . is that clear? If it isn't, then I'll go over it again."

There is an enforceable court-ordered judgment in place against my father. My brother is a DA, an officer of the court. My father enforced the law for 50 years. But, it appears when it comes to what happened in the family, "family law" seems the court of highest appeal. The position my brothers and father are taking is that they "disagree" with the judgment. They "disagree" with the verdict. In response to a recent deposition question as to whether he would cooperate in any kind of fashion or stipulation to get a payment plan set up on the judgment another brother said: "Oh, absolutely not. To get them money? Why should I get them money? It's not their money to begin with." When asked if he considered the judgment invalid he said: "in a way, yeah, I do. Sure. Yeah, I do . . . from a philosophical point of view, you bet I do . . . not only that, it was a travesty, a miscarriage of justice."

All three of my brothers are private investigators who own their own business. One is a DA and owns a business with his wife on the side. They are in the business of tracking judgment debtors. My brother Ed's wife has the same occupation. They know how to track a judgment debtor. They know all the tricks. And they know how to help Dad escape paying the judgment.

Dad didn't show up for trial. And is not paying on the judgment. A few weeks ago in his deposition regarding non-payment of the judgment he was asked if he felt it to be valid. His answer was: "No. I have problems with the statute of limitations. I have problems with reaching the discovery. I have problems with perjury. I have problems with the selection of the jury. I feel it was totally discriminatory in nature. I have problems with my representation. I object to the fact that there was no continuance granted. The testimony generally, particularly from one witness, is totally inappropriate and bizarre." My attorney then told my father "the judge testified to the truthfulness and the credibility of the witnesses; do you understand that?"

Dad's attorney then said to my father: "Do you feel you're able to pay the two point—what was it—2.5 million judgment?" My father answered a resounding "No." She said: "That's all I have (for questions)." My attorney asked Dad if he was able to make payments on it. He said "no". When she reminded him of his $400.00 discretionary income, he said: "The answer is no . . . I am unable to and I am unwilling to.

This position, of being "unwilling", of being "above the law" that Dad and my brothers have taken is not new. But the extent to which they are willing and able to go to defy the law is new. First it was in our home. Now Dad can defy the courts and my brothers are helping him. Not many families get to test the limits of the position that what happens in the family is private and sacrosanct. My sister and I have a valid child abuse judgment in place. It was won through due process. It is not something that one can disagree with to the extent that one can opt to comply. Dad held criminals accountable. My brother Ed does. But, my father is exempt and my brothers are helping him escape accountability. The law is applicable to others but not to oneself, when it comes to family matters that should be "settled around the kitchen table." Many kitchen tables are not safe forums for discussion. I took my father to court because I believed he respected the law and that he would meet me on this own turf. I used the legal system because I needed and wanted the protection of the law. I still believe in the law. I grew up believing that there were limits somewhere to atrocious human behavior. Dad had two separate sets of values and rules. One for criminals and one for his family. He still stands by this dichotomous standard. Even after 50 years in law enforcement.

The attitude that the law applies only to someone else unless you agree with it is dangerous. It is this attitude that is most frightening to me. It is what allowed my father to abuse all his children. It seems there are no limits in place for my father. There never were. He could do what he wanted, when he wanted and how he wanted when it came to his family—and now with the courts. He still is doing what he wants. He paints, goes to AA meetings, reads avidly, visits with friends, plays tennis. Life is going on for him. He will not take any responsibility for his actions. And it looks like, unless the pension laws are changed, he can get away with this and others will continue to have to pick up the tab for the damages he caused.

We need to protect the family. But when there is someone in the family that abuses power to the extent that human life and spirit are threatened, we need to be able to call upon the law for help. Coming to Washington, I feel I am gathering around a bigger, safer table than the kitchen table I grew up around. I am advocating for a change in the pension laws to allow garnishment of federal pensions for child abuse judgments. Dad's pension hung over our family like a hatchet. He abused us while it was accruing. The threat of loss of the pension kept my mother from turning my father in to the police. We could have been helped. We would have been less damaged. but maybe we couldn't have eaten or had a roof over our head had my father lost his job. Something can be done about this now. For me and for others. Money is important. It helps pay for the extensive treatment necessary to recover from a history such as mine. But something else is more important to the kid in me who looked down the road on East Platte. That kid right now is asking: "Is there anyone who will set a limit on Dad, stop him?" The grown woman in me knows that other kids are looking down their own long dark roads of terror hoping that someone will stop someone who is hurting them. I am trying to bring help to them. I want to walk up their roads and bring help.

The federal government is figuratively, the "man" I was looking for. By passing the Child Abuse Accountability Act into law, the government could set an example of accountability. The only way the government has to be accountable is by making

laws and policy that support and protect our right to life, liberty and pursuit of happiness.

I expect the federal government to hold my father accountable for child abuse and make a strong statement that it means business. No one who abuses a child will get the protection of the government. I hope there is a law higher than the "family law" that nearly killed me and my sisters and ravaged my six children, my husband and my granddaughter. In this matter, I don't think I am asking for justice any more. I think its mercy. Let kids know that there are limits. Let those who abuse power know there are limits.

I am not seeking this change in law as a victim. By taking my father to court and doing that action of holding him accountable I have moved out of that victim status. This status is not appealing to me in the least. And its only half true. I am coming to Washington to testify because I am a citizen who has both felt the effects of violence and who traumatized my own children: through my denial, my control, my inability to feel, my refusal to set limits (because I had been so limited), through my own moments of abuse of power physically and emotionally. I have been and continue to be accountable for the damage I caused. I have not just been a victim. Those who have been wounded in turn wound others. We have to stop splitting the world up into the bad ones and the good ones. The ones who hurt others and the ones who get hurt. That's too simplistic. And not true to my own experience. It violates my own integrity. I want this pension law changed because it is right to be accountable. I'm being accountable. My children say so. I can't say that of my Dad. Some people won't do it on their own. Dad needs to be made accountable. The government needs to set a limit and a standard of accountability.

Policy and law are powerful tools. They should be used wisely and justly and mercifully. The government has a responsibility to protect children and to hold people accountable for their actions. I am taking up my responsibility to that child I was back in Colorado who was looking for someone to stop Dad. I am also taking the responsibility a citizen should take. I am coming to the kitchen table of the nation. I think its a safer place to argue, discuss, make change than many family tables are today. In 1988 I wrote: "My Dad was a law man, a fugitive law man that no one ever stopped." You have the power and authority to stop him by passing the Child Abuse Accountability Act into law. I hope you'll also have mercy and set a limit and a standard of accountability for the nation.

Ms. NORTON. The subcommittee wants to thank you, Ms. Simone. It is impossible to calculate the damage done to you or the courage it took to come forward today and to do all that you have done to press this legislation forward. Only a single instance of the kind you have related today could have, I think, achieved the legislation that Ms. Schroeder placed and introduced into the Congress. I cannot underestimate how important your personal role has been. You have made an abstraction, an unthinkable abstraction real, so real that I have no doubt that this legislation will pass.

Ms. SIMONE. Thank you.

Ms. NORTON. Before we go to Mrs. Schroeder for questions, Ms. Seelan has also submitted testimony. I would ask her to summarize that testimony. We have five more panels here, I notice. Her entire testimony could then be put into the record.

Ms. SEELEN. Actually, my name is Joyce Seelen. I won't go through what I have already written; you have got that.

I would like to address your hope that the numbers are small. I don't think the numbers are small. I think the numbers are large that this bill will affect. I think right now they look small because nobody is following this because children who want to hold people accountable for what is done to them so rarely are able to collect judgments that very few lawyers will take them. It is virtually the only kind of case I do, and I get 5 to 10 calls a week. I get calls from hundreds and hundreds of people a year.

I can tell you that I have had a case with a 12-year-old girl who—a minister walked into court, pled guilty to sexual abuse on a child, and that was 2 years ago, and the restitution laws in Colo-

rado are pretty tough. She has not received a cent from that minister because the courts don't know exactly what to do. The restitution laws, if you steal $200,000 from a church, the church knows how to order a restitution law to pay that back. The judge is having a great deal of difficulty in figuring how to pay back a child because of what you just said, it is incalculable, the amount of damage that is done.

This law and I hope others like it that follow that were mentioned earlier getting to different kinds of pensions could provide the kind of access that will let everyone know exactly how serious a problem this is and will provide a substantial amount of recovery to the people who need it.

Thank you.

[The prepared statement of Ms. Seelen follows:]

PREPARED STATEMENT OF JOYCE SEELEN, ATTORNEY, HOLLAND, SEELEN & PAGLIUCA, DENVER, CO

The Child Abuse Accountability Act, H.R. 3694, is an important beginning in creating meaningful access to courts for abused children. The current structure of the civil system, nationwide, virtually excludes this group of children from court access for one reason—collection of verdicts which compensate for the injury done to these children is virtually impossible.

My name is Joyce Seelen. I have represented many children who have been abused by those in positions of trust—parents, family members, ministers, counselors. I receive five to ten calls every week asking me to represent children who have been abused. Many times the adult has pled guilty in a criminal action. I am almost always forced to say "no, I can't take your case", because the process is costly to the client, and even if the client wins, they are often unable to collect any judgment. Most lawyers will not even evaluate civil child abuse claims.

Collection of judgments in civil child abuse cases is virtually impossible for several reasons. First, insurance companies generally deny coverage when a claim involves allegations of sexual abuse. In Colorado, insurance coverage is essentially nonexistent. Second, in civil cases, the abusers leave town after a verdict is entered against them. Some leave town prior to trial. Tracking people, or their assets, is a long and expensive process. Those who stay often declare bankruptcy. Depending upon the type of bankruptcy filed, abuse verdicts may be discharged. Other times, abusers simply retire. Retirement benefits cannot now be garnished to satisfy civil court judgments. Abused children are left without a remedy.

Many states have court ordered restitution in criminal cases. Restitution ordered in cases of child abuse is again woefully inadequate. When a person steals $10,000, it is easy to decide the amount of restitution owed to a victim. When a minister sexually abuses a child, the amount of therapy, support and education needed is less exact. The criminal courts do not have the time to address the problem. Even where restitution is ordered, most convicted child molesters fail to pay.

The only solution is to allow those victims of childhood abuse, who prove their cases in a court of law, some reasonable way to recover their judgments. The Child Abuse Accountability Act provides one method.

You've heard about Sharon Simone. I'd like to tell you about a few more cases. I've given you a copy of a picture of Christa. Christa was 12 years old when she went to her minister for counseling. By 14 his sexual abuse of her included intercourse. Two years ago the minister pled guilty to two counts of sexual abuse on a child. The determination of restitution was delayed because, as the District Attorney told her, "it's not like he stole something from you, like a horse," he had only raped her. We went to civil court and received a judgment for Christa in march 1994. In May 1994, the minister quit his job and received $20,000 in severance pay which he immediately transferred somewhere. The minister was provided an active defense by the insurance company insuring the church at which the minister was employed when the abuse took place. The defense included attempts to blame the girl and to claim that the acts were protected by the First Amendment because he was a clergyman. The insurance company refuses to pay the verdict entered against the minister. The minister's pension is not subject to garnishment. This girl has spent two years in litigation. She has a verdict she cannot collect. Her story unfortunately, is common.

In another case involving a minister, the minister was put on "disability leave" by his employer during the course of litigation. The minister then began receiving disability benefits. Soon after a jury verdict was entered against him, his status was changed from "disability leave" to "retirement". Where "disability" benefits are subject to execution, "retirement" benefits are not.

Lisa is another client who is currently involved in a civil law suit against her grandfather, a retired Air Force officer, who freely admits that he sexually abused and exploited Lisa from the time she was a toddler until she was a teenager. The sexual exploitation included use of drugs, alcohol and pornography. A criminal plea agreement resulted in probation and limited restitution. No jail time was served. Lisa is now 21 and the single mother of a 4 year old. Her involvement in meaningful therapy is limited by lack of funds. Shortly after she filed a civil law suit against her grandfather, he filed for bankruptcy, despite the fact that he was making $48,000 a year as an electrical engineer, and was receiving an annual Air Force pension of $10,000. The validity of the bankruptcy filing is being contested. The bankruptcy court recently granted relief from stay so that Lisa may continue to pursue her civil action Lisa's grandfather now says he will take early retirement from his engineering job so that she will be unable to garnish his wages should she obtain a judgment in the civil suit. The only incoming income to Lisa's grandfather will be his airforce pension, and in the near future, social security benefits, neither of which is subject to execution. Her grandfather says he is "judgment proof". She is once again manipulated by him.

Trevor is a young man who was sexually abused over the course of many years by Tom, a "trusted" family friend. Tom is an international airline pilot for United Airlines. Two weeks after Trevor and two other boys reported the abuse to local police and a warrant was issued for Tom's arrest, Tom fled the State of Colorado. He may have left the country. Local law enforcement officers are working with the FBI to locate him. Since fleeing, Tom has cleaned out his local bank account which, at one point, contained over $70,000. He has attempted to convey title to his real property in Colorado. The only remaining funds which could help Trevor defray costs of his therapy and compensate him are contained in a United Airline's pension fund. Should Trevor pursue a civil action and obtain a judgment against Tom, he would likely be unable to collect anything.

I have many more stories. All involve innocent children who were abused by someone in a position of trust. All of these individuals deserve to be compensated for their pain, their emotional turmoil and their substantial therapy costs. All have compelling cases, but none will be able to collect the compensation due to them. The pension benefits afforded to the perpetrators of crimes against children should be utilized to assist the individuals whose young lives have been devastated, and who have proved their damages in a court of law. I strongly believe the Child Abuse Accountability Act is the first step in fighting a grave injustice.

Ms. NORTON. Thank you very much, Ms. Seelen.

I am going to ask the ranking member to say a few words. She has to go to a markup. I will be gone for a few minutes. I don't know how long it will be. You may be aware that the District appropriation is the only appropriation that has not passed the Congress, and so there is a serious matter that I have been called to attend to in preparation for that. I am going over to the chairman's office.

Mrs. Schroeder has kindly agreed to stay until I come back. I know she would want to stay for this testimony and be involved in the questioning of this testimony in any case, and I want to thank her because I know it has been a long morning for her.

I want to assure the other witnesses that I will return as soon as I have been able to confer on the District appropriation and come right back.

I want to thank Ms. Schroeder, and I want to ask the ranking member, Ms. Morella, if she has any questions.

Mrs. MORELLA. I am not going to ask questions. I just thank you for the courtesy of just making a final statement to you to indicate that I want to applaud you for the courage that it has taken to go through this; I had an opportunity to read your written testimony

also. I also want to recognize your attorney for the kind of work that she is doing which is so needed.

I would agree with her that this is not an individual case and that there is a proliferation of these kinds of cases. In addition to this bill that Congresswoman Schroeder has introduced, which I support and I know that you heard OPM supports it, so I think we are going to get fast passage of it, we also have within the crime bill the Violence Against Women Act which deals with judicial training, deals with a lot of other safeguards, protections, moving toward warrantless arrests, a lot of things in terms of family violence that we just must continue to address.

So we are making some strides but only because of people like you who can come forward, who can share with us the hope of getting some action, will we be making this kind of progress. So I just want to thank you.

Thank you, Mrs. Schroeder.

Ms. SIMONE. Thank you, Mrs. Morella.

Ms. SEELEN. Thank you.

Mrs. SCHROEDER [presiding]. And I obviously have no questions about my own bill and the one that you all have brought to my attention as to why it was necessary. But there is no question that if we find that there is some way that people can now enforce these judgments, I think that you will see an increase in this type of thing.

The publicity around yours and the fact that you can't collect any money is certainly a turnoff to anyone else who is even thinking about it, and I thought your point about saying to then Cabinet Secretary Sullivan this is certainly one of the things that the Federal Government has done that does not provide any incentive, in fact it is a barrier to trying to get child abuse under control.

But the bottom line is, hopefully this country will start thinking that the law applies inside the house as well as outside the house, and I think the Violence Against Women Act, I think this, I think any number of pieces are starting to move here, because for much too long we operated by the rule of thumb which used to be the common law that you could beat your wife as long as the stick wasn't bigger than the circumference of your thumb. That has been, unfortunately, printed in our society much too long, and we really do have to find a way that the domestic terrorism that people like yourself grew up in ends and ends once and for all and people don't think that the law applies to them only after they pass the front porch and are out on the public sidewalk.

So I thank you so much for what I know has been very painful testimony, and I thank your attorney for hanging in there without fees. You do our profession credit. Many, many people think that there is no attorney in the world that would ever do that. So I thank you, and hopefully this law gets passed, and then hopefully it begins a whole new day where we really start bringing this to term. So you have been real pioneers, and thank you for being here.

Ms. SIMONE. Thanks Pat.

Mrs. SCHROEDER. The next witness that we have on panel number four is Ms. Barbara Colter, who is a parent seeking child sup-

port, that is going to testify. Is she here this morning? There she is.

Welcome. We are very pleased to have you here. We will put your statement entirely in the record, and the floor is yours.

STATEMENT OF BARBARA COLTER, PARENT SEEKING CHILD SUPPORT, VANCE, SC

Ms. COLTER. Good afternoon. My name is Barbara Colter, and I'm the mother of one daughter, Natasha, age 17, who is owed $6,763.89 in unpaid child support.

During our marriage, my husband was in the U.S. Army and we lived a very comfortable lifestyle. Our daughter was born in 1977. In April 1979 my husband decided that he could no longer bear the responsibilities of raising a family, so he sent Natasha and me back to South Carolina to live with my parents. I was devastated.

Shortly after we got back to South Carolina, I was diagnosed as having lupus. In addition to having to deal with the breakup of my marriage, I now was unable to work because of this disease. My daughter and I were forced to go on welfare and live with my parents because we were not receiving child support from her father. He kept promising that he would send money, but it never came.

The divorce took place in North Carolina and became final in 1981, but because I was in the hospital I was unable to attend the final hearing and there was not an order for child support. Because of my illness, I was unable to fight to get a child support order established.

My daughter's father left the Army in 1985 and soon began working with the Federal Aviation Administration.

Finally, in June 1989, I was well enough to begin pursuing a child support order. I gave my local child support agency my ex-husband's address in Florida, but we did not get the order established until December 1990. The Florida courts did not issue a wage withholding order because my daughter's father said that he would pay the $267 a month that was ordered by the court. He did not make the first payment until 3 months later, in March 1991. Since that time, he has only made six other child support payments, three in 1991, two in 1992, one in 1993, and one since the beginning of 1994.

I kept calling my local child support agency to find out why they did not do an income withholding. They kept telling me that they had sent the paperwork to Florida. I would call Florida, and they would tell me that they would bring my daughter's father in on contempt charges, but nothing ever happened. Neither State would take the responsibility for sending an income withholding order to the FAA so that my daughter could receive support.

It has been a constant struggle for me to give my daughter the basic necessities in life such as food, clothing, and shelter. Christmas was very bleak. She never could have a birthday party like her other friends, and she relied on hand-me-down clothing from my sister's daughter.

At one time I was working two jobs, one from 6 o'clock a.m. to 3 o'clock p.m. and the second from 4 o'clock p.m. to 12:30 a.m., but because of my health I was unable to keep this up for about 3 months.

My daughter has suffered while her father has worked for the Federal Government agency. Her suffering and the suffering of thousands of other children whose noncustodial parents work for the Federal Government is needless. The U.S. Government as an employer should be setting an example for the rest of the Nation's employers by requiring all Government employees to pay their court ordered child support as a condition of employment. Children should not have to suffer a life of poverty while their absent parent works for the Federal Government and refuses to support them. Nonsupport is a crime against the children, a crime which causes poverty. The Federal Government is employing many of these criminals, which must no longer be tolerated.

Thank you.

Mrs. SCHROEDER. Thank you very much, Ms. Colter, and we really appreciate your case.

Let me just say I am a little confused because you were in the room too when the woman from the Office of Personnel Management said the current Federal policy was working. So what has been the problem? What does the FAA tell you as to why they are not withholding this money? Why are they not garnishing it?

Ms. COLTER. As of August 1994—I'm sorry, August 1993—I turned to ACES, and with the help of ACES they sent paperwork to Florida, and as of now the FAA has enforced the wage withholding order, and as of now I am receiving checks.

Mrs. SCHROEDER. So you are getting them now, but it took you until 1993 with them filling out the papers which you say were really complex and confusing.

Ms. COLTER. Right.

Mrs. SCHROEDER. And they are not doing anything about the back order?

Ms. COLTER. No.

Mrs. SCHROEDER. So the $6,000 plus that your daughter is owed they are not doing anything about, they are just saying now you will get your money. Is that correct?

Ms. COLTER. Well, they are really not saying anything. I usually get two checks every 2 weeks, and that is all, but they are not really saying anything about any back money.

Mrs. SCHROEDER. Has ACES attempted to get the back money that is due you?

Ms. COLTER. I am not sure.

Mrs. SCHROEDER. Maybe staff could look into that, because I think it is a very good, helpful model of what has happened versus what we hope will happen if this new bill passes.

Thank you so much for coming forward, because I think that helps say things aren't exactly perfect out there and there is a reason we are moving this bill. Thank you so very much, and good luck.

Ms. COLTER. Thank you for listening.

Mrs. SCHROEDER. Thank you.

The next panel we have is Nancy Ebb, who is from the Children's Defense Fund; and Ms. Sylvia Clute—I hope I am pronouncing that right—who is from the American Coalition of Abuse Awareness; Ms. Sally Goldfarb, the NOW Legal Defense and Education Fund,; Ms. Eleanor Landstreet, the National Child Support Enforcement

Association; and Ms. Gerri Jensen, the Association for Children for Enforcement of Support.

We welcome all of you. I know it has been a long and grueling morning, and we will put all of your statements in the record. If any of you—however you want to fire off. If you can summarize your statements, that will be very, very helpful to all of us who have gotten spread too thin as we try to move too fast, but it is a very critical topic upon which we want to move, and I am pleased that we are doing that.

Maybe we should start with Ms. Ebb. Would you like to start out?

STATEMENTS OF NANCY EBB, CHILDREN'S DEFENSE FUND; SYLVIA CLUTE, AMERICAN COALITION OF ABUSE AWARENESS; SALLY GOLDFARB, NOW LEGAL DEFENSE AND EDUCATION FUND; ELEANOR LANDSTREET, NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION; AND GERALDINE JENSEN, ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT

Ms. EBB. Thank you. CDF appreciates the subcommittee's interest in the vital issues of child support and child abuse.

Our oral testimony focuses on child support and summarizes findings from a just published CDF report. Our written testimony indicates as well our support for the important child abuse provisions being considered.

The failure to pay child support is a problem in every State, and, as Mrs. Morella noted, our report found that Americans are more faithful about paying for their cars than their children. Children pay when parents don't put their children first.

A survey of 300 single parents found, for example, that during the first year after a noncustodial parent left the home, more than half the families suffered a serious housing crisis. Over a third of the families reported that children went without important clothing such as a winter coat. CDF looked at data reported by State child support enforcement agencies to the Federal Government to measure how the system was meeting the needs of children, and our report etches in stark relief the need for bold child support reform.

State agencies are swamped with a huge case load increase. The case load of nonwelfare families asking for help nearly quadrupled from 1983 to 1992. State resources barely kept pace with this increase, and the case load each worker had to carry worsened.

These developments were ominous since the bottom line in child support is generally that you get what you pay for. There is a real correlation between what we invest in child support and the percentage of cases in which any collection is made.

This underlines the fundamental need to ensure that each State has staffing standards such as those required in H.R. 4570 so that case loads are manageable and that children don't fall through the cracks.

There is also a need to revise the way that Federal matching funds are provided to ensure that the States invest the resources to get the job done. States made some progress from 1993 to 1992, most notably in paternity establishment. These paternity improvements are in large part a response to Federal legislation in 1988.

They indicate that Federal reforms can make a difference in improving performance, and they drive home the importance of continuing Federal legislative efforts in this area such as those contained in H.R. 4570.

Similarly, a number of States improved their record in parent locate. Most notably, Washington State improved dramatically, rising from 20th in the country in 1983 to third nationally in 1992. It helped solve the problem of finding noncustodial parents with a novel approach, creating a central State registry of child support orders and matching information promptly reported by employers about new hires against this central registry. This approach means not only that the State does a better job in locating noncustodial parents but also that its information is fresher and more likely to result in reliable collections for children.

Creating a similar Federal registry as is proposed in H.R. 4570 insures that children in all States will benefit from this kind of innovative approach and helps solve the thorny problem of interstate location efforts.

Overall, however, progress is devastatingly slow. On the most basic of all measures, the percent of cases served by State agencies that had any child support collected at all, there was little significant improvement between 1982 and 1993. Indeed, at the current rate of progress it will take over 180 years before each child served by a State child support agency can be guaranteed that any collection will be made in his or her case in a year.

We are just plain not delivering on the promise of child support. These findings underscore how critical it is to create a child support safety net for children, such as child support assurance which guarantees that children receive at least a minimum child support benefit when they fail to receive child support despite their own best efforts to collect it.

In the long run, we can make child support better for children by federalizing collection of support, leaving establishment of paternity and the support obligation at the State level. We can establish child support assurance so that children don't suffer when parents fail to pay.

More immediately, we can and must make changes similar to those provided in H.R. 4570 and in child support proposals that have been introduced in the administration's welfare reform plan as well as in another proposal which will be introduced shortly by Representative Matsui and others.

We look forward to working with the committee to make these child support reforms a reality for children, and we thank you very much for your attention.

[The prepared statement of Ms. Ebb follows:]

PREPARED STATEMENT OF NANCY EBB, CHILDREN'S DEFENSE FUND

The Children's Defense Fund appreciates the Subcommitte's concern about the vital issues of child support and child abuse. Our testimony focuses on the need for broad-based reform of the child support system, and highlights findings from a just-released CDF report on child support. This report underscores the critical need for reform efforts such as those proposed by H.R. 4570, the Child Support Responsibility Act, as well as by the Administration in its welfare reform proposals and by upcoming legislation that will be introduced by Representative Matsui. The testimony addresses more briefly the need to strengthen federal laws on child abuse and our support for H.R. 3694, the Child Abuse Accountability Act.

The failure to pay child support is a problem in every state. Indeed, as a country we are more faithful about paying for our cars than for our children: in 1992, the default rate for used car loans was less than three percent, while according to the Census Bureau the delinquency rate for child support owed to mothers was 49 percent in 1990. Children pay when parents do not. A 1992 survey of 300 single parents found, for example, that during the first year after the noncustodial parent left the home, more than half the families faced a serious housing crisis.

CDF surveyed data reported by state child support enforcement agencies to the federal government to measure how the system was meeting the needs of children. Our report etches in stark relief the need for bold child support reform. According to the report, state agencies are swamped with a huge caseload increase—most notably in the number of non-welfare families asking for help. The non-welfare caseload nearly quadrupled from 1983 to 1992. State resources barely kept pace with this dramatic increase, and the caseload each worker had to serve worsened. These developments were ominous, since the bottom line is, in general, that your get what you pay for: better investments in child support correlate with higher percentage of cases with at least some child support collection.

States made some progress from 1983 to 1992, most notably in improving paternity establishment and in locating non-custodial parents. However, progress is slow. Moreover, on the most basic of all measures—the percentage of cases that have at least some child support collected—children are not significantly better off in 1992 than they were in 1983. In 1983, states made some collections in 14.7 percent of their cases. By 1992, collections had edged up to 18.7 of the caseload. At the current rate of progress, it will take over 180 years before each child served by a state child support agency can be guaranteed even a partial support collection. Ten generations of children will be born, reach the age of majority, and pass out of the child support system without our being able to guarantee each child that any child support was obtained on his behalf in a year.

In the long run we can make child support work better for children by federalizing collection of support, leaving establishment of paternity and the support obligation at the state level. We can establish child support assurance so that children do not suffer when parents fail to pay. More immediately, we can and must make changes similar to those provided in H.R. 4570 and in the Administration's child support proposals.

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The Children's Defense Fund ("CDF") appreciates the opportunity to testify on legislation to strengthen federal laws on child abuse and child support. CDF is a privately supported charity that advocates for the interests of low income children. We work intensively on child support and child welfare. We follow with great interest legislative proposals to make these systems work better for children.

Our testimony today focuses on the need for broad-based reform of the child support system. We would like to take this opportunity to share with your findings from a just-published CDF report on child support. These findings underscore the critical need for reform efforts such as those proposed by H.R. 4570, the Child Support Responsibility Act, as well as by the Administration in its welfare reform proposals. We highlight more briefly the need to strengthen federal laws on child abuse and our support for H.R. 3694, the Child Abuse Accountability Act.

THE IMPORTANCE OF CHILD SUPPORT FOR CHILDREN

The failure to pay child support is a problem in every state. Across the country, millions of children—from every economic background—are plagued by the failure of their parents to fully support them. Child support is an urgent public policy issue because it affects so many children. By 1992, one in every four children—26 percent—lived in a family with only one parent present in the home. Losing a parent from the home is often an economic disaster. Half of the 17.2 million children living in single-parent families in 1992 were poor, compared with a poverty rate of 10.9 percent among children in two-parent families.

Just because a parent is absent from the home does not mean that he or she should be absent from a child's life—either emotionally or economically. Parents have an obligation to support their children to the best of their ability to do so. Yet too often, parents who leave the home also leave behind their sense of financial responsibility. Only 58 percent of custodial mothers had a child support order in 1990, according to the Census Bureau. Most custodial mothers without a child support order wanted one but could not get it. Even families with a child support order are

not guaranteed support. Of those due support in 1989, half (49 percent) received no support at all or less than the full amount due.[1]

The sad truth of the matter is that as a country we are more faithful about paying for our cars than for our children: in 1992, the default rate for used car loans was less than three percent, while the delinquency rate for child support owed to mothers was 49 percent in 1990.

Children pay when parents do not. A 1992 survey of 300 single parents in Georgia, Oregon, Ohio, and New York documents the real harm children suffer when child support is not paid:

During the first year after the parent left the home, more than half the families surveyed faced a serious housing crisis. Ten percent became homeless, while 48 percent moved in with friends or family to avoid homelessness.

Over half the custodial parents reported their children went without regular health checkups, and over a third said their children had gone without medical care when they were sick.

Nearly a third reported that their children went hungry at some point during that year, and over a third reported that their children lacked appropriate clothing, such as a winter coat.[2]

ENFORCING CHILD SUPPORT: ARE STATES DOING THE JOB?

The upcoming federal welfare reform debate will include new child support reform proposals. Pending legislation such as the Child Support Responsibility Act also offers important opportunities to examine how states are doing the job and what change is needed. CDF's new report, issued last month, helps shed light on progress and perils in a troubled child support enforcement system. This report etches in stark relief the need for bold child support reform.

While states have made progress in some areas, most notably in improving paternity and in locating non-custodial parents, the data tell a sobering story.[3] Progress is slow.

Moreover, on the most basic of all measures the percentage of cases served by state child support enforcement agencies that have any support collected—children were not significantly better off in 1992 than they were in 1983. At the current rate of progress, it will take over 180 years before each child served by a state child support agency can be guaranteed even a partial support collection. Ten generations of children will be born, reach the age of majority, and pass out of the child support enforcement system without our being able to guarantee each child that any child support was obtained in a year on his or her behalf. Our child support system is failing to deliver on its most basic promise: that parental support should be a regular, reliable source of income for the family, helping put a roof over a child's head and food on the table.

THE CASELOAD EXPLOSION—A SYSTEM UNDER STRESS

CDF's report looked at what states were investing in child support enforcement, and what the outcomes were for children. Both investments and outcomes have to be put in context: state agencies were swamped with a huge increase in caseload, and struggling hard to keep up with this dramatic new demand for help.

State child support enforcement agencies more than doubled their caseload between 1983 and 1992, increasing from 7 million to 15.2 million. AFDC cases served by state child support enforcement agencies remained relatively constant. They increased by slightly less than a million cases from 1983 to 1992, basically keeping pace with overall increases in the AFDC caseload. The non-welfare caseload almost quadrupled, however, skyrocketing from almost 1.7 million in 1983 to almost 6.5

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[1] Bureau of Census, "Child Support and Alimony: 1989," Current Population Reports Series P–60. The Census Bureau data, unlike that reported by the states to the federal Office of Child Support Enforcement, includes single-parent families that are not receiving support enforcement services from the state agencies (for example, parents who hire private attorneys to seek child support, parents who represent themselves, and parents who are not actively pursuing child support). Unless otherwise indicated, the measures used in this report are based on data reported by state child support agencies, rather than Census Bureau data.

[2] National Child Support Assurance Consortium, "Childhood's End: What Happens to Children When Child Support Obligations Are Not Enforced," February 1993.

[3] Since 1975, federal law has provided federal matching funds so states can operate child support enforcement agencies that help families on welfare and non-welfare families that ask for help. Major federal efforts in 1984 and 1988 sought to improve state child support performance. CDF's report uses data reported by state child support enforcement agencies to the federal government in 1983 and 1992 to measure whether they have improved significantly, and whether they are doing the job for children.

million in 1992. These cases poured into a system that was already resource-poor—an ominous development for children who depended on it for help.

INVESTMENTS IN CHILD SUPPORT ENFORCEMENT

Although state and federal governments increased their child support investments from 1983 to 1992, the new resources barely kept pace with the exploding caseload. The inability of resources to do more than keep pace with demand was bad news, since the bottom line in child support is that you get what you pay for: good outcomes for children generally (though not always) correspond to what a state invests in its child support system.

Our study looked at two key measures of state investments in child support enforcement: the amount state agencies spent per case, and the caseload each full-time equivalent child support worker had to serve. The news is disheartening: from 1983 to 1992, the investment in child support enforcement per case stagnated, while the caseload per worker worsened.

Expenditures per case. Average expenditures per case remained virtually unchanged from 1983 to 1992, inching up from a national average of $130 per case in 1983 (in 1992 dollars) to $132 per case in 1992. The failure to increase expenditures per case is bad news because there is a significant relationship between how much states invest in enforcement per case and how many cases served by the state agency have at least some child support collected.[4]

Worker caseloads. The number of cases a child support worker is assigned also relates significantly to good outcomes for children. Generally, higher caseloads diminish the prospects for obtaining at least some collection for child. Sadly, the average caseload per full-time equivalent child support worker actually increased (or worsened) between 1983 and 1992. In some parts of the country, child support administrators report caseloads in excess of a thousand cases per worker. Even the most dedicated, efficient worker cannot do a good job under these circumstances.

Our report's findings about state investments underline the need for federal legislation that ensures states have the resources to do the job right. There is a fundamental need to ensure that each state has staffing standards so that caseloads are manageable and children do not fall through the cracks. There is also a need to revise the way that federal matching funds are provided, so that states invest enough in child support to get the job done.

OUTCOMES: HOW STATE AGENCIES PERFORM FOR CHILDREN

Our study looked at key child support outcomes as well as at state investments. These outcomes underscore the inadequacies of the current system and the need for increased investments to improve performance for children. Our report used available data to look at six basic measures of performance.[5]

Based on these criteria, we found that states have made some progress since 1983, particularly in improving paternity establishment and in locating non-custodial parents. In cases with collections, dollar amounts collected improved very modestly. States have become moderately more "cost-effective," collecting more dollars compared with each dollar they spend on enforcement. There are significant variations among states on all measures, suggesting that there is clearly potential for states to improve their performance.

However, progress is slow. Even the best states often fall far short of desirable performance. Moreover, on the most basic of all measures—the percentage of cases that have at least some child support collected—children are not significantly better off in 1992 than they were in 1983. The vast majority of children served by state child support enforcement agencies not only do not have full collections made on their behalf, but fail to have any collection made at all. These findings reinforce the agency of broad reform of the child support enforcement system.

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[4] For example, in FY 1992, of the four states with the highest expenditures per case, three of them led the country in percentage of cases with any collection. Conversely, the four states with the lowest expenditures per case had among the worst collection records. These states ranked 48th, 34th, 46th, and 43rd in the country in percentage of cases with any collection.

[5] These measures included: the percentage of cases served by the agency in which any collections were made; cases needing a support order in which a support order was obtained; cases in which paternity was established; cases in which an absent parent was located; the average amount collected in cases in which a collection was made; and the "cost-effectiveness" of the state agency—the amount of child support collected compared to each dollar spent on child support enforcement. This testimony summarizes some of the report's key findings. For a full discussion, see "Enforcing Child Support: Are States Doing the Job?"

Cases with any collections. Probably the best indicator of a state's performance is the percent of cases served by the state agency in which any collection is made.[6] The system has made little significant progress. In 1983, states made some collections in 14.7 percent of their cases. By 1992, collections had edged up to 18.7 percent of the caseload. Some states did far better than others: Vermont, the top-ranked state, made some collection in 40.3 percent of its cases, compared with only 8.6 percent in Rhode Island.

The failure to make more progress in cases with any collections is deeply troubling, since it highlights the failures of our current system to reach most children: only a small minority of children currently served by state child support agencies have any hope of obtaining even partial child support. Indeed, we projected that at the current rate of progress it would take over 180 years before each child served by state child support agencies could be guaranteed that any child support would be collected in his or her case in a year. This finding underscores how critical it is to create a child support safety net such as child support assurance, which guarantees that children receive at least a minimum child support benefit when they fail to receive child support despite their best efforts to collect it.

Collections per case. The relatively small number of cases with collections is particularly unfortunate because when child support is collected by a state agency, it can make a remarkable difference in a family's economic well-being. In 1992, in cases in which there was child support collected by a state agency, the average amount collected nationally was $2,811. Collections averaged $3,258 for non-AFDC cases and $2,695 in AFDC cases.

Cases with paternity established. Measuring whether paternity is established is important because when a child is born outside of wedlock, paternity must be legally established before the child can obtain a support order. Since more than one out of every four children is now born out of wedlock, a state's success in obtaining paternity is key to its overall performance. Federal child support enforcement reforms in 1984 and 1988 increased expectations that states pursue paternity. States responded with significant improvements. In 1983, the median state child support enforcement agency established 21.5 paternities for 1983, the median state child support enforcement agency established 21.5 paternities for every 100 out-of-wedlock births in the state. By 1992, the median state agency established 43.6 paternities for every 100 out-of-wedlock births—more than double than 1983 rate.

Paternity establishment still remains far from adequate: in 1992 the median state agency established paternity in only 47 percent of cases needing the service. However, the substantial improvement between 1983 and 1992 indicates that federal reforms and state model practices can be effective. The paternity improvements also drive home the importance of continuing federal legislative efforts to improve state performance in this area. States can, and have, responded to such directives. Additional measures that emphasize outreach about the importance of establishing paternity, and that streamline the process, can significantly improve the current system.

Support orders established. The obligation to pay support generally begins with establishment of a support order (voluntarily by agreement, or by order of an administrative or judicial decisionmaker). States have had only modest success in establishing support orders: in 1992 the median state established support in only 34.3 percent of the cases—about one in three—that needed a support obligation established.[7] Moreover, comparing numbers of support obligations established nationally to total national caseload, the percent of support obligations established actually declined from 1983 to 1992. These findings underline the importance of ensuring that each state has expedited procedures that move cases along and ensure that they do not languish in the system without a child support order—a critical issue that should be addressed in this round of child support reforms.

Absent parents located. In many cases, the process of establishing paternity or collecting support cannot begin because the absent parent cannot be located. State agencies are responsible for locating noncustodial parents in such circumstances. States significantly improved their track record in locating non-custodial parents:

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[6] Because this number includes cases in which paternity has not been established, or there is not yet a child support order, it includes cases in which collections cannot be made. However, because state agencies are responsible for establishing paternity and obtaining orders in cases that need them, looking at the percentage of cases with any collections is a fair way of measuring overall system performance. If few cases have collections because the agency has not done the most basic work to establish paternity or obligations to pay, then the system is failing. The percentage of cases with any collections in some ways understates system problems, since it counts cases in which even the most token payment was made at some point during the year, rather than cases with full or significant ongoing collections.

[7] There is no comparable data for 1983.

the number of absent parents located (as percentage of total caseload) more than doubled from 1983 to 1992.[8] A number of states were able to improve performance by expanding the number of data bases they used to locate parents and their assets; by automating their location efforts; and by creating innovative ways of obtaining information about newly hired employees. New child support legislation should build on these successful models and ensure that they are used throughout the country.

CHILD SUPPORT RECOMMENDATIONS

The child support numbers paint a picture of a system that has made some heartening steps forward. At the same time, it fails to deliver on its central promise: to make child support a regular, reliable source of support for children in single-parent families. Fundamental reform is necessary to make child support deliver on this promise. To provide children with a stable economic base, child support changes should be combined with other reforms—broader health coverage and child care assistance, improved tax assistance for low-income parents, a minimum wage that allows parents to earn a family wage, and a reformed welfare system.

We believe that child support reform must include child support assurance, combined with aggressive, improved enforcement of support. Child support assurance protects children in single-parent families by ensuring that they receive a minimum level of support from their noncustodial parent. If the parent cannot provide that support, or fails to do so, government provides a minimum assured benefit, and pursues the noncustodial parent for reimbursement. Enforcement should be centralized in a federal agency such as the Internal Revenue Service, freeing up state resources to establish paternity and child support obligations. H.R. 4051, the Secure Assurance for Families Everywhere Act (SAFE), offers this agenda for change. We strongly support its long-term approach.

If these measures are not feasible in the short term, immediate improvements must be made in the current system. As our report underscores, these improvements should be comprehensive, not piecemeal. They should address the fundamental resource issues; require that all states are using state-of-the-art techniques; and ensure that children do not suffer while we work to hold parents responsible.

At a minimum, there should be child support assurance demonstration programs of significant scope that establish the success of the approach. Reforms should be made in the federal-state enforcement system that strengthen federal assistance in collecting support, correct state resource shortages, and build on successful models. Key areas needing improvement include: more effective enforcement that incorporates successful state practices; central state registries that build on the successful experience of states like Massachusetts in processing large numbers of cases through highly automated location and enforcement efforts; better outreach; strengthened paternity establishment; uniform national guidelines for setting the level of the child support obligation and updating the level regularly; expedited processes to establish paternity and child support obligations and to enforce support; and provision of adequate resources, training, and auditing procedures to make the system work.[9]

We are heartened that H.R. 4570 includes many of these essential provisions, as does the Administration's child support reform proposal. We understand that Representative Matsui and co-sponsors will introduce shortly legislation that also addresses these key concerns.

We would particularly like to point out the importance of some of the provisions that can be addressed by this Subcommittee. H.R. 4570 would create a federal registry for locating and tracking parents who owe child support. This provision builds on the successful experience of Washington State. Washington State improved its parent locate record dramatically (from 20th nationally in 1983 to third in 1992) and helped solve the problem of stale child support information with a novel approach: it created a central registry of child support orders, against which it matches information promptly reported by employers about newly hired employees. This approach means not only that the state does a better job locating noncustodial parents, but also that its information about where a noncustodial parent works is fresh and can produce better, prompter collections for children. Creating a federal registry (as proposed by H.R. 4570) ensures that children in all states will benefit

[8] In 1983 the number of absent parents located nationally as a percentage of the child support enforcement agencies' caseload was 11 percent. In 1992 it was 24.7 percent.

[9] A more detailed description of these reforms is provided in "A Vision of Child Support Reform," a blueprint of child support reform prepared by CDF and other national advocacy groups.

from this approach and helps resolve the thorny problem of locating parents in interstate cases.

We are pleased, as well, that H.R. 4570 attempts to create new enforcement mechanisms such as allowing access to retirement annuities to enforce child support. When wage withholding is not possible because a noncustodial parent does not have wage income, it is important to be able to reach other forms of income. We trust that final legislation will include protections (similar to those that apply in wage withholding cases) to ensure that withholding from annuities does not reduce the income of the noncustodial parent below subsistence levels.

STRENGTHENING FEDERAL LAWS ON CHILD ABUSE

In closing, we would like to comment very briefly on H.R. 3694, the Child Abuse Accountability Act. This Children's Defense Fund supports this effort to strengthen federal laws on child abuse.

The number of children reported abused and neglected continues to increase each year, with just about 3 million children reported abused and neglected in 1993, and an estimated 44 percent of the reported cases involving physical or sexual abuse. The Second National Incidence Study of Child Abuse and Neglect conducted in 1986, still the most recent report on the actual incidence of abuse and neglect, found that among abuse cases there were significant rises in the incidence of physical and sexual abuse when compared with the 1980 incidence study. Physical abuse increased by 58 percent and sexual abuse occurred at more than triple its 1980 rate in 1986.

It is our hope that H.R. 3694, which would allow the garnishment of an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System to satisfy a judgment against an annuitant for physically abusing a child, will help to deter physical and sexual abuse and to help compensate abuse victims, both children and adult survivors of child abuse.

The Children's Defense Fund appreciates the opportunity to present testimony. We are grateful for your interest in these issues of compelling importance to children, and look forward to working with you and your staff on them.

Mrs. SCHROEDER. Thank you so much, and there is nothing I can say except amen. I mean it is like Chinese water torture. Hopefully, this time we can dent the rock a lot harder anyway.

Let me move on to Ms. Clute. We welcome you, and the floor is yours.

Ms. CLUTE. Thank you very much, and I appreciate the testimony on behalf of the American Coalition of Abuse Awareness being in the record. That being the case, I am simply going to address my comments to my experience as a civil litigation attorney since 1988 working on child sexual abuse cases.

Unfortunately, I am here to report that the case in Colorado is not at all unusual. I have during that period of time taken two cases through a jury trial, obtained significant judgments, but to date not collected anything against either of those judgments.

I think that this is a unique attribute of this type of case because a person who will sexually molest his or own children has an ability not to accept responsibility for that but, rather, places the responsibility, transfers that responsibility, to their own victim, and in support of that I would like to just read a couple of segments from a letter that I obtained—that I received from an attorney representing a father who incested his daughter. The letter is dated May 4, 1994, and this was subsequent to our obtaining a $250,000 verdict and judgment against this father.

The attorney wrote, "Barry feels that by continuing the matter—that is, the trial—before the jury and not settling it beforehand—that is, upon his terms and conditions—he has been unduly punished."

He goes on to state that they offered $35,000 in settlement against the $250,000 judgment. He said, "I am not unaware that

this is a fraction of the judgment, but having a judgment and collecting it a are two different things. Barry is unemployed"—he quit his job—"he very possibly could take a job in a State wherein he could not be garnished"—he has. He is now employed in North Carolina—"and, furthermore, he is considering bankruptcy. In addition to that, the home, as you know, is in joint names." The home was transferred to joint names one month after we filed the suit for incest.

These are typical problems in this type of case, and therefore for Federal and private pensions to be subject to garnishment to help pay the tremendous costs of therapy and other costs that arise as a result of this type of tragic abuse that happens is one of several very important deterrent effects that I believe we can take to stop this type of abuse, and when we do that, when we shift responsibility to pay for the of injury to the person who causes it, I think we can go a long ways in dealing with our deficit problems, entitlement problems, lack of productivity among many adults who are injured and carry forward the burdens from this type of abuse as children.

Thank you very much.

[The prepared statement of Ms. Clute follows:]

PREPARED STATEMENT OF SYLVIA CLUTE, AMERICAN COALTION OF ABUSE AWARENESS

Good morning Ms. Chairperson and distinguished members of the Subcommittee on Compensation and Employee Benefits. The American Coalition for Abuse Awareness (ACAA) appreciates this opportunity to testify today. The ACAA is an ad hoc coalition of individuals and groups committed to resolving the issue of sexual abuse of children. The ACAA has been founded to seek enactment of federal and state legislation establishing the right of a child to be free from sexual victimization, and appropriate protections to assure that such victimization does not occur. Additionally, the ACAA seeks to establish a national body to make policy recommendations on issues related to childhood sexual abuse, protection of children, and adult survivors of abuse.

Over the last year and half, the ACAA has been contacted by a number of adult survivors of child sexual abuse, some of whom are pursuing civil suits for legal redress against the alleged perpetrators. In the best interest of the survivors who have accessed the civil courts and been awarded monetary compensation for injury, the ACAA strongly supports the Child Abuse Accountability Act. H.R. 3694 is vital legislation that will aid survivors, as well as send the message that perpetrators will be held responsible for the very real physical and emotional injuries that they cause.

H.R. 3694, introduced by Congresswoman Patricia Schroeder, would allow adult survivors who have been awarded monetary compensation for injury access to the alleged perpetrator's federal pensions. Garnishing federal pensions is not a new concept and has been used in cases of child support and spousal payment. Extending this to child abuse payments is vital.

The movement for children's and survivor's rights is pushing forward, but we need the support of the federal government at this very critical time. Through H.R. 3694, the federal government has the opportunity to illustrate concern for sexual abuse and a willingness to hold perpetrators financially accountable for the injuries they cause.

THE PROBLEM

Estimates of child sexual abuse suggest that up to one in three or four females and one in five to seven males are sexually abused before the age of eighteen. Sexual abuse transcends race, class and gender, occurring in epidemic proportions in the United States. For many reasons, survivors of abuse are often unable to seek redress for their injuries until well into adulthood.

Child sexual abuse is a crime that has traditionally been shrouded in secrecy. Researcher Judith Herman, MD, estimates that the majority of survivors reach adult-

hood with their secret still hidden and undetected by the world around them.[1] In fact, only a small percentage of abused children are ever seen by mental health or social agencies.[2]

Secrecy about abuse is secured by the alleged perpetrator in a variety of ways. First, children are often threatened, whether implicitly or explicitly, not to disclose the abuse. Survivors have stated that they were told by the perpetrators that other family members would be killed, no one would believe them, they would cause a break-up of the family, to name just a few threats. Children may feel implicitly threatened to be silent by the abuser's age, size, or position of authority.

Secrecy about abuse is also perpetuated when some survivors forget the abuse, until memories return later in adult life. Temporarily "forgetting" the abuse is a defense mechanism employed by children to help them survive such horrendous occurrences. The majority of women in a 1987 study by Herman and Schatzow had some amnesia for abuse.[3] A study conducted by Linda Meyer Williams at the University of New Hampshire yields similar results, indicating that many survivors with documented cases of sexual abuse do have amnesia for the abuse.[4]

THE IMPORTANCE OF LEGAL REMEDY

The dynamics of secrecy and our society's general unwillingness to acknowledge the extent of abuse in this country creates a sense of self-blame for survivors. Survivors are either explicitly told by perpetrators or others that the abuse was their fault, or implicitly sent this message by a society that doubts them and refuses to deal openly with sexual abuse. In part because of this silence, sexual abuse has long remained a crime for which perpetrators have remained relatively secure in knowing that they will get away with it. Legal remedy through the civil court is one opportunity for the survivor to publicly put the blame for sexual abuse where it belongs—with the abuser. Additionally, civil remedies can begin to show abusers that they should not be so secure in thinking that they will not be held responsible for their actions.

Researcher Judith Herman notes the importance of public recognition of the abuse for the survivor which can be attained through the court.[5] Additionally, the civil court has the potential to serve as an avenue by which to deter future abuse by showing that abusers will be held responsible for their crimes. (Notably, most abusers have multiple victims, sometimes across generations and survivors are anxious to stop the abuse.)

However, the civil court is becoming an empty promise for restitution if the perpetrators are not held accountable to meet the awards of the case. Once again, the survivor is being sent the message that speaking out, standing up for his/her rights and pursuing legal remedy will not have an effect on the perpetrator. Just as silence protected the perpetrator while the survivor was a child, the abuser is again protected from paying through federal pensions by the very laws of a government that is supposed to protect the children and hold perpetrators accountable.

INJURIES

The injuries suffered by victims of child sexual abuse are very real and damaging. Effects include chronic depression, revictimization due to feelings of shame and hopelessness, sexual promiscuity or dysfunction, intense body pain, among other symptoms. In a recent study, women who were sexually abused reported "significantly more medical problems, greater levels of somatization, and more health risk behaviors than did nonabuse women."[6] Additional, one study indicates that 35% of men and women in a drug and alcohol treatment program reported being sexually abused as children.[7]

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[1] Herman, J., "Father-Daughter Incest," Cambridge: Harvard University Press (1981).

[2] Herman, J., Russel, D., Trocki, K., "Long-Term Effects of Incestuous Abuse in Childhood," American Journal of Psychiatry, 143:10, 1293–1296 (1986).

[3] Herman, J., Schatzow, E., "Recovery and Verification of Memories of Childhood Sexual Trauma," Psychoanal. Psychol., 4:1–14 (1987).

[4] Williams, L.M., "Adult Recall of Child Sexual Abuse," Talk presented at 15th Annual Conference on Child Abuse and Neglect, Prevent Child Abuse North Carolina, Raleigh (1994). Journal of Consulting and Clinical Psychology (in press).

[5] Herman, J. "Trauma and Recovery," New York: Basic Books (1992).

[6] Springs, F.E. and Friedrich, W.N., "Health Risk Behaviors and Medical Sequelae of Childhood Sexual Abuse," Mayo Clin. Proc. 67: 527–532 (1992).

[7] Wallen, J., and Berman, K., "Possible Indicators of Childhood Sexual Abuse for Individuals in Substance Abuse 63 (1992), citing Rohsenow, D.J., Corbett, R. and Devine, D. "Molested Chil-

Continued

The fact is simple. Child sexual abuse causes real physical and emotional injury. Survivors, as US citizens, are entitled to sue for damages because of the injuries inflicted by the abusers. The difficulties with bringing a lawsuit are manifold, though, and often the survivor will not be able to file suit until well into adulthood.

Survivors must first remember the abuse and associate it with any psychological or physical injuries. Remembering abuse is a long and difficult process. Many survivors suffer from Post Traumatic Street Disorder (PTSD) during the memory process. Symptoms of PTSD include flashbacks, intrusive thoughts, nightmares, sleep disturbances. This symptom pattern and diagnosis was first seen in Vietnam veterans and is now recognized as a part of the many survivors' experiences. PTSD and associated crisis reactions can wreak havoc in an individual's daily life. A survivor in the crisis period during remembering is not in any position to enter the legal system.

Survivors have the burden of proof in civil cases and are often required to disclose treacherous details and extremely emotionally upsetting information in pursuing redress through the civil court. It cannot be stressed enough that the survivor must go through much recovery work to reach a point where pursuing legal remedy will not cause more emotional distress or harm.

RELEVANCE TO FEDERAL PENSIONS

Due to the amount of time that usually elapses before a survivor is able to seek legal remedy, the survivor is typically an adult and the perpetrator close to, or at the age of, retirement. Thus, considerations regarding federal pensions are extremely relevant in these situations.

In cases where civil rulings have been in favor of the survivor, a pattern is emerging where alleged perpetrators are liquidating and/or hiding assets to avoid paying on the monetary award. If the alleged perpetrator is successful in hiding or liquidating assets, the federal pension is the only one that cannot be hidden (aside from private pensions). To then have the federal government protect the one source that is still trackable does not make sense.

Furthermore, survivors have won money to compensate for injury, a right of all citizens. In interest of equity and fairness, allowing survivors access to the courts as legal remedy, but then refusing these same individuals access to court ruled awards is unjust.

Monetary awards often go towards costs related to the injury, e.g. therapy and health are. The recovery process is understandably long and costs incurred in this process can skyrocket. Survivors deserve access to federal pensions to help meet these costs.

Additionally, survivors often incur huge legal costs in civil cases. One survivor who has contacted the ACAA was awarded $500,000 plus interest (bringing the total award at present to approximately $800,000), through a Massachusetts court. To date, she has only been able to collect $2,000. Throughout the court process, she incurred legal expenses of $50,000, not including costs to the firm that represented her, amounting to $400,000. Additionally, she has spent more money trying to trace the perpetrator's assets, which are all hidden by now.

A Virginia attorney recently represented survivors in two cases, one of whom was awarded three million dollars, the other $250,000. Neither woman has been able to access a cent of their awards. In one case, the perpetrator's lawyer wrote to this attorney detailing his client's intentions to hide his assets, move to a state where wages cannot be garnished and change the title of his house to joint title with his new wife. Under Virginia law, the equity of the house is inaccessible because both names are on the title. Subsequent to this letter, the perpetrator did indeed transfer the title of the house and move. Furthermore, he took $60,000 in cash with him when he retired from his job, but claims that he has already spent the entire amount. Additionally, he refuses to disclose where he is now living. In the second case, the perpetrator moved all of his assets to Switzerland where they are now inaccessible to the survivor.

SUMMARY

Perpetrators are still getting the message that they can get away without paying for their crimes . . . and they literally are. On behalf of the American Coalition for Abuse Awareness, we would strongly urge this subcommittee to recommend passage of the Child Abuse Accountability Act. This is an instrumental step in holding per-

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dren: A Hidden Contribution to Substance Abuse?" Journal of Substance Abuse Treatment, 13 (1988).

petrators accountable for the injuries they cause and sending a message that we will not tolerate abuse of our country's children.

On behalf of the American Coalition for Abuse Awareness, thank you for the opportunity to testify today.

Mrs. SCHROEDER. Thank you very much, and I think you make some very, very critical points that we need to hear.

Now we are going to move to Sally Goldfarb from the NOW Legal Defense Fund.

Sally, welcome.

Ms. GOLDFARB. Thank you very much, and thank you for your leadership on the Child Abuse Accountability Act. This is a very important measure because we know that child abuse and particularly child sex abuse are widespread throughout American society. I am here today to focus specifically on the impact that the Child Abuse Accountability Act would have in cases of child sexual abuse.

We have long known that anywhere from a fifth to a half of all American women have been sexually abused during childhood, and that was reinforced by a recent study by the Bureau of Justice Statistics which revealed that over half of the victims of reported rapes in 1992 were under the age of 18.

The physical and psychological injuries inflicted by child sexual abuse are severe and long lasting, and there is growing recognition that civil damages are a very important remedy for those injuries. Civil damages can provide funds that are needed for counseling and treatment, and in many States the statute of limitations for civil lawsuits is more flexible than for criminal prosecutions, so often an adult survivor of incest may be able to file a civil action but no criminal prosecution is available at all.

As part of our campaign to obtain legal redress for survivors of child abuse, the NOW Legal Defense and Education Fund coordinates a national attorney network consisting of over 150 lawyers who represent plaintiffs in civil child sex abuse cases. These attorneys have informed us over and over that collecting damage awards in child sex abuse cases is extraordinarily difficult.

As Ms. Clute described, when damages are awarded in a child sex abuse case, the defendant often will flee the jurisdiction, liquidate and hide his assets, transfer ownership of property to a new spouse, declare bankruptcy, or engage in any number of other subterfuges that are designed to ensure that he will never have to pay the victim.

As a result, there are literally millions of dollars as we speak that remain unpaid in cases where the defendant has been found to actually have committed abuse, the plaintiff has been awarded damages, but the defendant has manipulated his financial situation in order to avoid paying.

Now this trend has at least three very damaging effects. First, of course, the plaintiff is denied the relief to which she has been found entitled by a court of law.

Second, attorneys are deterred from taking on meritorious cases because the perpetrator is unlikely to pay. Certainly the attorney from Colorado who represented Sharon Simone is commendable in having taken a case despite that problem. All too many attorneys simply can't afford to do so.

Third, and perhaps most important, by allowing defendants to avoid paying for the harm that they have caused, the message to perpetrators is that the laws against child abuse can be broken with impunity.

The Child Abuse Accountability Act is an important step toward solving this problem. The bill, of course, targets a situation where a defendant has been ordered to pay damages in a child abuse case and is enjoying the benefits of a Federal pension while refusing to satisfy the outstanding judgment. Since Federal funds are being misused in this way, it is absolutely incumbent on the Federal Government to step in and stop the problem.

So we applaud all the sponsors of H.R. 3694 for your attention to the problem of obtaining justice for child sex abuse, and we also would call on Congress to pass House Concurrent Resolution 200 introduced by Mrs. Schroeder with Representative Morella and Representative Reed, which expresses the sense of Congress that adult survivors of child sex abuse should have access to the courts.

We have come a long way since the days when the rape of a spouse or child was not considered a crime because women and children were viewed as a man's property. Hopefully, we can continue our progress one step further by supporting and passing H.R. 3694.

[The prepared statement of Ms. Goldfarb follows:]

PREPARED STATEMENT OF SALLY GOLDFARB, NOW LEGAL DEFENSE AND EDUCATION FUND

Thank you for the opportunity to appear before you today. My testimony will focus on the Child Abuse Accountability Act, H.R. 3694, and its importance for achieving justice in cases of child sexual abuse.

The NOW Legal Defense and Education Fund is an independent non-profit, public service organization dedicated to achieving equality for women and girls through litigation, legislation, and education programs. NOW LDEF is the nation's leading women's rights advocacy organization working on legal remedies for incest and child sexual abuse. In addition to filing *amicus curiae* briefs on this issue in over a dozen cases throughout the country, NOW LDEF has assisted advocates and legislators in numerous states with their efforts to pass legislation reforming statutes of limitations for civil and criminal actions arising from child sex abuse. After years of extensive research and analysis, NOW LDEF serves as a national clearinghouse for legal information and technical assistance to survivors of child sex abuse, attorneys, judges, legislators, and members of the public.

THE IMPACT OF INCEST AND CHILD SEXUAL ABUSE

Sexual offenses against children are widespread in all strata of American society. Studies estimate that one-fifth to one-half of all American women were sexually abused during childhood, most of them by a father, stepfather, or other male relative.[1] Girls are believed to be two to ten times more likely than boys to be victims.[2]

The damage inflicted by child sexual abuse is severe and long-lasting. In addition to the immediate physical and psychological trauma of the attack, sexual abuse survivors typically report a variety of disorders long into adulthood and in some cases permanently. These include low self-esteem, anxiety, depression, a heightened sense of vulnerability, and extreme feelings of guilt and shame. Survivors suffer from phobias, psychosomatic and sleep-related disorders, sexual dysfunction, inability to differentiate between sex and affection, and difficulties in forming meaningful, trusting

[1] David Finkelhor, "Prevalence," in "A Sourcebook on Child Sexual Assault" 20,21 (1986).

[2] Swink & Leveille, "From Victim to Survivor: A New Look at the Issues and Recovery Process for Adult Incest Survivors," in "The Dynamics of Feminist Therapy" 119 (D. Howard ed. 1986). Because girls are the majority of victims and men are the majority of perpetrators, this testimony uses "she" to refer to the plaintiff and "he" to refer to the defendant. However, H.R. 3694 is entirely gender-neutral.

relationships. They are prone to self-abuse in the form of anorexia, bulimia, obesity, alcohol and drug abuse, and even suicide.[3]

THE IMPORTANCE OF CIVIL REMEDIES FOR CHILD SEXUAL ABUSE

There is growing recognition of the need to provide a tort remedy for survivors of childhood sexual abuse.[4] Civil damages can provide survivors with much-needed funds to obtain costly counseling and treatment. In many states, the statute of limitations for civil lawsuits is more flexible than for criminal prosecutions, meaning that an adult survivor of abuse may be able to file a civil action long after a criminal prosecution would be time-barred.[5] In addition, civil redress may be more accessible than criminal remedies because it has a lower burden of proof. A survivor may avoid pressing criminal charges because she does not want to see a family member incarcerated, and of course civil actions are designed to vindicate the interests of the survivor whereas criminal charges are brought by the state.

THE DIFFICULTY OF COLLECTING JUDGMENTS IN CHILD SEX ABUSE CASES

As part of our clearinghouse on legal remedies for survivors of child sex abuse, NOW Legal Defense and Education Fund coordinates a national attorney network consisting of over 150 attorneys nationwide who represent plaintiffs in these cases. These attorneys have informed us time and again that collecting damages awards in child sexual abuse cases is extraordinarily difficult. The experience of Sharon Simone and Sue Hammond in this regard is unfortunately all too common. After damages are awarded in cases of child sexual abuse, defendants typically flee the jurisdiction, liquidate and hide their assets, transfer ownership of property to a new spouse, declare bankruptcy, and engage in other subterfuges designed to ensure that they will never have to pay the victim. Members of our attorney network have told us that defendants in child sex abuse cases are even more likely to engage in these fraudulent practices than other tort defendants.[6] The fact that most homeowners' insurance policies will not cover acts of intentional wrongdoing[7] means that unless the plaintiff can reach the defendant's assets, it will usually be impossible to recover any damages for child sexual abuse.

As we speak, there are innumerable child sexual abuse cases in which the defendant has been found to have committed abuse, the plaintiff has been awarded significant damages, but the defendant has manipulated his financial affairs in order to avoid paying the judgment.[8] This trend has at least three extremely damaging effects. First, the plaintiff is denied the relief to which she has been found entitled by a court of law. She may be deprived of funds she needs to pay for psychological counseling and medical care. Having gone through the trauma of abuse and relived that trauma during an adversarial legal proceeding, she is now victimized when the legal system proves unable to help her. Second, attorneys are deterred from taking on meritorious cases because the perpetrator is judgment-proof, or they are forced to settle strong cases for a pittance in order to avoid the likelihood of an uncollectible judgment.[9] Third, and perhaps most important, by allowing defendants to evade paying for the harm they have caused, the message to perpetrators of child

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[3] See generally J. Herman, "Father-Daughter Incest" (1981); J. Renvoize, "Incest: A Family Pattern" (1982); Blake-White & Kline, "Treating the Dissociative Process in Adult Victims of Childhood Incest," Social Casework 394 (Sept. 1985).

[4] Allen "Tort Remedies for Incestuous Abuse," 13 Golden Gate U.L. Rev. 609 (1983).

[5] See generally NOW Legal Defense and Education Fund, Incest and Child Sexual Abuse Legal Resource Kit (1994).

[6] One experienced practitioner speculated that this may be because child sex abusers are by nature secretive, manipulative, and deceitful. Telephone conversation with Kathy Tatone, July 7, 1994.

[7] See generally L. Karp and C. Karp, Domestic Torts, at chap. 9 (1989 & 1994 Supp.).

[8] Examples brought to our attention by our attorney network include: a Minnesota woman who has an outstanding judgment of $2.4 million against her father for abusing her and against her mother for failing to protect her. Telephone conversation with Kathy Tatone, July 7, 1994; a Massachusetts science teacher who was convicted of indecent assault and battery against his stepdaughter and received a two-year suspended sentence. After apparently hiding his assets, he failed to pay any part of a $37,500 civil judgment. Telephone conversation with Richard Tasken, July 11, 1994; and an Oregon case in which a jury awarded $500,000. The defendant, whose personal net worth is estimated by plaintiff's counsel at $300,000-$400,000, has so far paid $12,000. Telephone conversation with Michael Morey, July 8, 1994.

[9] One attorney estimated that he declines 50–75 percent of the child sex abuse cases presented to him because of collectibility problems. Telephone conversation with Michael Morey, July 8, 1994.

sex abuse is that the law has no teeth. This undermines the deterrent effect of laws against child sex abuse and encourages disrespect for the legal system.

THE CHILD ABUSE ACCOUNTABILITY ACT

The Child Abuse Accountability Act is an important step toward solving the serious problem of willful non-payment of judgments in child sex abuse cases. This bill targets the situation where a defendant in a child abuse case, having been found liable and ordered to pay damages for the harm he has inflicted on the victim, is enjoying the benefits of a federal pension while refusing to satisfy the outstanding judgment. When federal funds are being misused in this way, it is incumbent on the federal government to step in and stop the abuse.

Under the Hatch Act amendments enacted in 1993, federal wages are subject to garnishment.[10] The rationale for extending garnishment to federal pensions is particularly strong in the case of child sexual abuse. One of the most common damaging effects of sex abuse in childhood is the development of psychological blocks which prevent the victim from discovering that she has been injured by the abuser's conduct. Often these psychological coping mechanisms prevent the survivor from being able to sue until she is well into adulthood.[11] By that time, her abuser, if he was a federal employee, is likely to be already retired.

Moreover, the fact that current law permits access to federal pensions for child and spouse support payments[12] suggests another rationale for allowing garnishment of federal pensions to pay child abuse judgments. Like recipients of child and spousal support, victims of child abuse are not "ordinary" creditors. They are most often members of the abuser's family, and are almost invariably someone toward whom the abuser stood in a position of trust and authority.

The Child Abuse Accountability Act deals only with cases in which the plaintiff has already won, and therefore is an extremely modest and reasonable starting point for addressing this important issue. We also call on Congress to pass H. Con. Res. 200, introduced by Rep. Schroeder with Rep. Morella and Rep. Reed, which expresses the sense of Congress that statutes of limitations and other legal procedures should be reformed to permit adult survivors of child sexual abuse to have access to the courts.

CONCLUSION

We applaud the sponsors of H.R. 3694 and the members of this subcommittee for your attention to the problem of obtaining justice for survivors of child sexual abuse.

Regrettably, our legal system has for too long ignored and condoned the harm done to women and children through domestic violence, rape, child sexual abuse, and incest. The rape of a spouse or child was traditionally not considered a crime because women and children were considered a man's property.[13] Now that our society has reached a long overdue understanding of the harm inflicted by child sex abuse, it is essential that the legal system adjust its response so as to afford a meaningful remedy. Currently, the large number of unpaid judgments in child sexual abuse cases means that survivors are unable to obtain legal redress, abusers go unpunished for their acts, and our legal system is failing to deter the devastating epidemic of sexual abuse of children. We urge you to support H.R. 3694 so that federal pensions received by proven child abusers will be available to help their victims.[14]

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[10] 5 U.S.C. § 5520a.

[11] Psychological blocks caused by child sexual abuse take several forms, including repression of memories of the abuse. In a study of women who had been treated as children for sexual abuse in a hospital emergency room, more than one third did not recall the abuse when questioned seventeen years later. Linda Meyer Williams, "Recall of Childhood Trauma: A Prospective Study of Women's Memories of Child Sexual Abuse," paper presented at the annual meeting of the American Society of Criminology, Phoenix, AZ, Oct. 27, 1993. Often the repressed memories resurface much later. See generally J. Herman, *supra*. In one study of adult incest survivors, three out of four were able to obtain evidence from outside sources corroborating their memories of abuse. Herman & Schatzow, "Recovery and Verification of Memories of Childhood Sexual Trauma," 4 Psychoanalytic Psychology 1, 10 (1987).

[12] 5 U.S.C. § 8345; 42 U.S.C. § 659; 5 C.F.R. § 581.

[13] Saunders, The Child Sexual Abuse Case: A Short Course for Judges, 27 Judges' J. 20, 40–41 (1988).

[14] It should be noted that the Consumer Credit Protection Act, 15 U.S.C. § 1671, would presumably apply to the garnishment proceedings contemplated by the Child Abuse Accountability Act. Therefore, even if H.R. 3694 were to pass, there is no danger that an elderly child abuser would be rendered destitute by having his entire federal pension turned over to the victim of abuse.

Mrs. SCHROEDER. Thank you very much, Ms. Goldfarb. We really appreciate your adding to the weight of the testimony.

Ms. Eleanor Landstreet from the National Child Support Enforcement Association. The floor is yours.

Ms. LANDSTREET. Thank you very much for inviting the National Child Support Enforcement Association, NCSEA, to testify in support of child support reforms as they pertain to Federal employee and retiree obligors.

My name is Eleanor Landstreet. I have been the executive director of NCSEA since February and am very grateful to have the opportunity to assist this committee.

NCSEA is a national nonprofit membership organization whose members represent the entire spectrum of the child support community but especially those who work in the State and local child support programs—judges, lawyers, case workers. One of the functions of our association is to provide national, regional, and State training for those child support professionals around the country, and for that reason we are very familiar with the problems that arise, the lack of understanding and the frustrations which arise when there is a case in which the obligor is a Federal employee or a Federal retiree or, I might add, a Federal contractor.

NCSEA strongly favors the provisions in this proposed legislation which would go a long way in placing at least as much responsibility upon Federal agencies to assist with location of delinquent obligors and their income and the enforcement of child support orders as is placed upon private employers.

State and Federal law increasingly requires private employers to assist in the enforcement of child support orders. Private employers are required to provide income information and to withhold wages. Section 103 of this bill requires employers to report new hires to a Federal child support registry.

NCSEA supports new hire reporting and discourages any exemption of Federal employees, current or retired, and believes that the language of the bill should be explicit that it does apply to Federal employees.

Several States have already enacted new hire reporting laws. In those States, Federal agencies are not reporting new hires. That is because they are not subject to State law. Not only do Federal agencies not comply with State new hire reporting laws, but also they do not report to the State employment security commissions. A Federal employee may work many months before the child support agency learns of the source of income.

I recently heard some good news—in fact, yesterday—that perhaps the administration may have decided to allow child support workers to send income withholding orders or notices for all Federal personnel or retirees from any Federal agency to one finance center. If that is true, and I hope it is, that would be a huge step in reducing the burden on the child support worker and ensuring speedy enforcement of orders.

However, we shouldn't stop there. We need to require all Federal agencies to report new hires to the State child support enforcement agency in the State of employment or, if and when the national State child support registry is in place, to report to that new national State registry. This language is not in the bill, and it would

be wonderful if that bill could incorporate some of this language so that the agency can learn about the income soon enough and commence withholding so that the arrearages that Ms. Colter has had accrued won't accrue, and we also need to require Federal agencies to comply with the national subpoena duces tecum which should be required to accompany every income withholding notice or order.

The subpoena should require that the agency provide a detailed list of the Federal employee's periodic and lump sum income and any other benefit so that the agency can ascertain whether the order should be modified and the availability of medical insurance.

This language is also—even though the bill does provide for national subpoena duces tecums, it doesn't say that Federal agencies are subject to those national subpoenas, and for establishment purposes section 201 is excellent. It provides for a much needed type of substitute service of process on Federal employees by providing a special agent from each Federal agency for service of process for establishment and presumably modification cases, and this is a wonderful provision in this bill.

NCSEA also applauds section 422 which restricts the occupational licenses of Federal workers similar to State laws which are already in place in many States and the provisions that would bar a worker from Federal employment if delinquent. These provisions too begin to place at least as much responsibility on the Federal employee obligor as on the private of self-employed obligor.

State and Federal law increasingly hold privately employed or self-employed obligors to stricter and stricter enforcement remedies. For instance, State occupational license restrictions which have been enacted in several States, and as pending in this and other Federal proposals, serves to reduce the ability of a delinquent obligor to earn a living unless he or she makes arrangements with the child support agency to comply with the order.

NCSEA supports barring employment and would expand the language to also include those who contract with the Federal Government, not just employees of the Federal Government.

NCSEA supports many of the other bill's provisions as well, including the mandatory adoption of UIFSA. However, we would like the language to state that the States must pass UIFSA verbatim, and also because statutes are so hard to understand by the practitioners and the judges who have the job of implementing it, that the States must be required to publish the comments to UIFSA and to use the conference's section numbering for ease of reference throughout the country and to provide nationwide training for child support enforcement staff, the bar, judges, hearing officers, et cetera.

The attachment of certain lump sum payouts including lottery winnings, insurance settlements, proceeds of lawsuits, is a very good provision that I have personal experience with as a DA in Philadelphia. We made lots of money on lawsuit proceeds, except we only knew them if the person said that his lawyer said something and I'd say, "Well, where's your lawyer now?" Well, he is not a family court lawyer, so I figured he must have been a private PI lawyer. But this was only random collection. If you had a situation where you had attachment of lump sums and even reporting by lawyers, it would certainly increase collections.

We also support uniform enforcement systems like administrative liens that are initiated from the State level, not the county level, to ensure uniformity. We also support the requirement that State and Federal financial institutions provide each quarter to the child support agency the name, addresses, and Social Security number of depositors so that a lien can be sent to the financial institutions.

The law should also ensure—and this is one of the questions that came up with the last panel: Why is it that we are having a problem out there if all Federal agencies are complying with garnishments? It is not that they are not complying, it is that you can't find them to begin with, and so that is why the new hire reporting requirement for the Federal Government would be good, and also much of the income and benefits that Federal workers receive are not subject to garnishment, and so we feel that all forms of Federal and other income should be subject to withholding, including but not limited to BAQ, BAS, BHA, and any other benefits.

Also, the Federal withholding process is different, or they claim that their withholding process is different, from State withholding processes, which adds unlimited confusion to the child support worker when trying to process cases. It should be the same as the State withholding systems.

NCSEA applauds the denial of passports to noncustodial parents but believes that the arrearages should be reduced from $10,000 to $1,000, but we believe that the NCB should be able to make arrangements, which is currently not in the language of the bill, to pay support and to obtain a passport subject to revocation for noncompliance.

In closing, the agencies that were mentioned earlier—the Department of Defense, the Veterans Administration, and the Post Office, which have so many obligors who were delinquent in their child support agencies, and all Federal agencies should serve as role models to other employers for whom Federal law has placed and will continue to place more and more responsibility. There is a double standard there that brings down collections, which generally reflects poorly on the State and the child support worker, not the Federal agency, not to mention the terrible strain on a family when child support is not being paid, especially when it would have been avoided, when there is a worker there, but no one knows about it yet.

In closing, the Federal Government should cooperate with State agencies and at least perform as well as private employers and, at best, be proactive and even innovative in finding ways to locate, establish paternity and support, and enforce against its personnel, retirees and contractors.

And one more note. I was going to tell Congresswoman Snowe that the Maine driver's license restrictions that have been so successful—Arkansas also has commercial driver's license restrictions for truckers, et cetera, which has also proven very successful.

Thank you very much.

[The prepared statement of Ms. Landstreet follows:]

PREPARED STATEMENT OF ELEANOR LANDSTREET, NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION

Madam Chair, members of the Committee: Thank you for inviting the National Child Support Enforcement Association (NCSEA) to testify in support of child support reforms as they pertain to federal employee and retiree obligors. My name is Eleanor Landstreet. I'm the Executive Director of the National Child Support Enforcement Association. NCSEA is a national nonprofit membership organization. Our members represent the entire spectrum of the child support community, especially state and local child support professionals—including judges and other decision-makers, lawyers, and caseworkers. We provide national, regional, and state training for child support professionals around the country and are very familiar with the problems, the lack of understanding and the frustrations which arise in processing the child support cases of federal employees and retirees. For instance, even though wage withholding was mandated in 1984, most child support professionals are unaware that the child support orders of federal workers or retirees may be enforced through the federal agent for service of process of the specific federal agency and not through the state of employment. The federal Office of Child Support Enforcement recently mailed to each state's child support agency a list of the federal agents for service of process. Of course, the states should be required to provide this list to the child support professionals who process interstate cases in their states.

State and Federal law increasingly requires private employers to assist in the enforcement of child support orders. Employers are required to provide income information and to withhold wages. Several proposals, including this bill, will require employers to report new hires and to accept wage withholding orders from out of state. Several states have already enacted new hire reporting laws. In those states, federal agencies are not reporting new hires, because they are not subject to state law. NCSEA strongly favors any legislation which would place at least as much responsibility upon federal agencies to comply with child support orders as is placed upon other employers.

Similarly, state and federal law increasingly strengthens enforcement remedies against obligors who are employed by private companies or who are self-employed. For instance, state occupational license restrictions, which have been enacted in several states and is pending in this and other federal proposals, serve to reduce the ability of the delinquent obligor to earn a living unless he or she makes arrangements with the child support agency to comply with the order. NCSEA supports any legislation which would place at least as much responsibility on the federal employee obligor as on the private or self-employed obligor.

NCSEA supports most of the Child Support Responsibility Act's other provisions, as well. NCSEA recommends several reforms which will strengthen the nation's child support enforcement system, many of which are reflected in the bill: improve federal funding to enhance states' financial ability to deliver timely, uniform and effective child support services, and to encourage family self-sufficiency; commission a study on the development of national child support guidances; require all States to adopt the Uniform Interstate Family Support Act (UIFSA) verbatim, as recommended by the National Conference of Commissioners on Uniform State Laws; to require states to also publish the comments to UIFSA and to use the Conference's section numbering for ease of reference throughout the country; and to provide nationwide training for child support enforcement staff, the private bar, and judges and hearing officers; establish minimal staffing standards for child support agencies and assist the states to increase trained staff and resources; require federal, state, and local licensing agencies to deny licenses to delinquent child support obligors to improve the collection of child support, especially in cases where the obligor is self-employed; mandate that states enact laws requiring that certain lump-sum payouts, including lottery winnings, insurance settlements and the proceeds of lawsuits, be used to satisfy past-due support; encourage national leadership on child support issues by strengthening the federal Office of Child Support Enforcement and elevating the director of OCSE to the position of Assistant Secretary; conduct a study to determine why some custodial parents fail to cooperate with child support enforcement efforts; require the establishment of a national registry of all child support orders—either at the federal level or an interconnected network at the state level—which includes specific data elements for identification and enforcement; requirement the establishment of a uniform system of collection and distribution of child support payments at the state level, with an option for non-AFDC obligees to decline this service, require a uniform enforcement system at the state level with an option for non-AFDC obligees to apply for services; mandate W–4 reporting by employers of new employees within fourteen days of hiring to an appropriate agency as des-

ignated by the State; require state and federal financial institutions to provide each quarter to the IV–D agency the names, addresses, and Social Security numbers of depositors; mandate that states enact procedures requiring that a lien on all personal and real property the obligor arise by operation of law upon the accrual of any past due support, with authority to administratively place a lien or seizure on the property without returning to court or other tribunal, and with defenses limited to mistakes of fact, and such liens be entitled to full faith and credit by other states' courts, tribunals and IV–D agencies, direct that the Office of Child Support Enforcement develop a uniform lien form for use and recognition by all states; require a uniform system for distribution of current and past-due support, including defining priority of AFDC and non-AFDC arrears, retroactive support, interest, penalties, and fees which would foster financial independence for families and not penalize states in program funding; and require a uniform system for distribution of payments in cases involving more than one family where less than the full amount owed is received, allocated on a pro rata basis according to the amount of the order.

In 1989, the U.S. Inspector General issued a report finding that of a sample of around 64,000 cases of federal employees and retirees who were delinquent in their child support payments, around 50,000 of the cases were obligors who were employed by the Department of Defense, the Veterans' Association, and the Post Office. These agencies, and all federal agencies, should serve as role models to other employers from whom federal law has placed and will continue to place more and more responsibility.

Mrs. SCHROEDER. Thank you very much, and that was very, very helpful, to be that specific.

Ms. Jensen, we welcome you, and we heard from our prior witness how helpful you were, and we thank you and your organization for helping in this situation. The floor is yours.

Ms. JENSEN. Thank you for this opportunity, and, Mrs. Schroeder, on behalf of the 25,000 ACES members throughout the country, we thank you for your leadership on this issue.

ACES members are families who are entitled to child support. We have joined together to work for improved enforcement to protect our children from the crime of nonsupport, a crime that causes poverty.

In getting ready to testify today, I came upon a report that was done by the Department of Health and Human Services Office of the Inspector General where they matched the Federal employees' records with the records of those who were being submitted to the IRS to attach their income tax refund.

From those records they found that there were 65,000 Federal employees who were delinquent in their child support. The amount of support owed was about $284 million, and of this about $187 million was owed to families on welfare. This study was done in 1989, so it leads us to believe that the numbers are probably much higher, at least today there must be at least 120,000 children in America who don't receive support who have a parent who works for the Federal Government. ACES would like to see provisions of H.R. 4570 expanded to include those who work as contractors or subcontractors for the Federal Government.

One of our members, Robin Batten who lives in New York, who is disabled and on AFDC, has been attempting to collect support for her two children for over 3 years. The father is a subcontractor and has worked for different firms such as Unisys and Hughes. He owes over $30,000 in back child support. He has moved from Connecticut to Oklahoma to Alabama to Missouri working as a field engineer. Every single company he worked for has been as a contractor to the Federal Government, and he is using this employ-

ment actually as a barrier so that he does not have to pay his child support.

The current child support State-based system has been in place almost 20 years. In 1975 when we started, about 20 percent of the children received payments, about 50 percent of the children did not have orders. The last report to Congress showed that about 18.7 percent of the children got payments and that about 45 percent of the children still need orders.

The current system is failing our children. We are asking Congress to consider radical reform. We would like to see the national registry placed in the IRS, and we would like child support collected the same way as we collect taxes. We firmly believe children are as important as taxes. We would like self-employed people to have to pay their child support quarterly and ahead, just like they pay their taxes.

We believe that if those two things are done, that the current 18.7 collection rate will go to about 80 percent collection rate. This will leave about 20 percent of the people who either aren't paying child support because they themselves are poverty stricken or are ill and can't afford to pay and those who are dodging the law by moving from State to State.

We believe those children should be protected by a child support assurance program so that while the Government tracks down the deadbeat or during the time period when a parent can't pay, kids are protected from poverty. We would like to see them grow up in a family where they watch at least one of their parents go to work every day, and child support assurance provides a safety net rather than the current system that forces them on to welfare until they learn hopelessness and helplessness. We believe that this can happen and it is time to do it, and ACES pledges any support or any efforts needed to help make it a reality for our children.

Thank you.

[The prepared statement of Ms. Jensen follows:]

PREPARED STATEMENT OF GERALDINE JENSEN, ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT

ACES is the largest child support advocacy organizations in the U.S. We have almost 300 chapters in 49 states with over 25,000 members. ACES members are typical of the 9.9. million families entitled to child support payments in the U.S. We have joined together to seek improved child support enforcement so that our children are protected from the crime of non-support, a crime which causes poverty.

There are 23 million children in the U.S. owed $34 billion in unpaid child support. ACES estimates based on a study done by the Office of the Inspector General, that at least 120,000 children entitled to support have a parent who works for the federal government. The Office of the Inspector General matched Federal Employee records with cases that had been submitted for the U.S. Income tax refund to be attached for collection of back child support.

Out of two million federal employees, 65,000 were found to be in arrears of their child support order. It is estimated that federal employees owed about $284 million in unpaid child support, of this about $187 million is owed to families on AFDC. Federal employees found to be delinquent in payments included 50,861 at the Department of Defense, 2,680 at the Veterans Administration, 8,329 employees of the Postal Service and even 411 employees at the U.S. Department of Health and Human Services. The study was done based on 1988–89 records, which means the number of children owed support by federal employees is probably even higher today.

Action is needed! American children deserve an effective and efficient government child support system. The federal government should lead the way as the model employer for the nation. Provisions of H.R. 4570, which makes it a condition of employ-

ment by the federal government to disclose child support obligations and make arrangement for payroll deductions to pay, is needed. Additionally, retired federal employees should be held accountable by the same standards.

ACES would like to see HR 4570 expanded to include those who work for the federal government as contractors or subcontractors. ACES member, Robin Batten, who is disabled and on AFDC in New York, has been attempting to collect child support from her children's father for over three years. The non-payer has been employed as a subcontractor for the federal government through several different firms such as Unisys and Hughs–STX. He currently owes the children over $30,000 in back child support. Mr. Batten has been able to use his employment with the federal government as a shield to protect him from paying child support. He has done this by moving from Connecticut to Oklahoma to Alabama to Missouri, working as a field engineer. The local child support officials in Connecticut, New York and Oklahoma have been unable to collect support because of Mr. Batten's many moves and changes in status as a worker for various companies who subcontract to the federal government.

America's child support enforcement system fails in almost every possible way to serve the children. The system needs radical, fundamental restructuring. The current child support system which was set up in 1975 when the collection rate by government agencies was 20% and about 50% of the cases needed child support orders established. New federal laws in 1984 and 1988 were enacted to improve the child support system. But in 1993, the collection rate by government agencies was only 18.7% and 45% of the cases still needed orders to be established.

ACES believes that continuing to throw good money after bad is not good policy. States have proven their inability to run an effective child support enforcement system, the national collection rate is only 18.7%. The argument not to change sounds like; we must continue to make B52 bombers even though they are obsolete, because if we change B52 bombers, employees would lose their jobs. We can retrain workers and make sure they have jobs in the new system. We cannot replace childhoods lost to poverty.

Children are the innocent victims of family break up and they should be protected from poverty. We should adopt a child support assurance program that guarantees that child support will be a regular, reliable source of income for children growing up with an absent parent.

A system like Social Security is needed for children entitled to child support to insure that they receive regular payments even if the non-custodial parent cannot be found or cannot pay due to unemployment. This child support assurance program will reduce poverty in the U.S. by 42%.

Children need to be put before all other debts, and support payments need to be due until collected. Federal law should prohibit statute of limitations on child support cases. Commission recommendations extend collection for 20 years, this is actually less than what some states have now under judgement renewal laws.

Studies show that the best way to end the cycle of poverty is through education. Children growing up in single parent households entitled to support have fewer opportunities for higher education. A federal statute making duration of support to age 23 if the child is attending school is needed.

ENFORCEMENT

A national registry should be developed where all W–4's are verified so that income withholding can be done routinely. This system of income withholding, payment collection, distribution and enforcement of orders should be placed under the IRS.

The Federal Office of Child Support Enforcement should be placed in the IRS. An Assistant Tax Commissioner should be appointed to be Director of the IRS Child Support Division. Initially the Division would take over current duties of OCSE. In one year it would be required to have set up a central registry of interstate case orders and do interstate income withholding. Within two years all new cases would be added to the registry and the income withholding process. Within five years the system should be fully functioning and include all child support cases.

We must send a national message that supporting children is as fundamental a responsibility as paying taxes. This national agency must be given all the tools it needs, including improved information for locating absent parents and improved tools for making prompt and effective collections, to aggressively pursue child support and medical support for children.

Only thirteen states have taken advantage of the provision in the 1984 Child Support Amendments for 90% funding for statewide automated systems. When funding was extended in the 1988 Family Support to 1995, thirty-nine state child support

agencies told ACES, in our annual survey, that they would still not have a system in place by the deadline. Even if States had automated systems in place, all would be different and they are not being designed to interlink. State governments blame the Federal Office of Child Support for the lack of automated systems and the Federal Office of Child Support blames the states. This finger pointing does not help children. Children suffer because states cannot even identify which cases need orders, or which cases have not received payments so that action can be taken to implement income withholding. This is why only 20 percent of the cases have income withholding orders eight years after Congress passed laws making it mandatory upon a one month default and four years after this law was expanded to include income withholding at the time an order is entered.

ESTABLISHMENT OF ORDERS

Jurisdiction to establish orders should be in the state where the child lives. This requires federal statues which place jurisdiction of child support action to establish and/or modify orders in the place where the child resides. A National Jurisdiction Act should have the following provisions: (1) Interstate child support case to be cause of action (2) the venue for the action to be where the child resides (3) trial court of any state should have power to serve the defendant. Parental Kidnapping Prevention Act is a model for child state jurisdiction.

In order to ensure an efficient system to establish paternity and orders, State child support IV–D structures should be required to be "single"-statewide. Audit failures by states show patterns of lack of services statewide in states that are state supervised county run programs: WI, MD and PA have been found not to provide statewide services. CA, NJ, CO, IL, IN, MD, MI, MN, NE, PA, TN, OR and OH have been found to have problems with establishment of orders and collection/ distribution of support payments.

We must ensure that each state has in place effective laws and administrative rather than judicial process to establish paternity and child support orders. Successful state models which have demonstrated dramatic improvements in establishing paternity and obtaining support orders through an expedited administrative process need to be expanded nationally. These administrative processes are effective for children on whose behalf paternity must be established and for children whose paternity is not disputed but who need support due to parental divorce, desertion or separation.

Child support enforcement and establishment actions should be administrative rather than judicial whenever possible.

Adequate information is available and sufficient experience can be found from state governments to develop fair national child support guidelines. A system which allows a non-custodial parent who lives in Alabama and earns $40,000 a year to pay only $60 a week while a parent in New Jersey who earns $40,000 a year pays $120 a week, needs to end. This lack of fairness leads to non-support.

National child support guidelines should be put in place. National guidelines are needed to guarantee children a fair level of support. Children's support orders should be determined by their needs and their parent's ability to pay, not by where they live and which state guideline applies There must be a national process, as well, for periodically reviewing and updating child support orders to ensure that orders keep pace with children's needs and parents' income.

LOCATING ABSENT PARENTS

An expanded Federal Parent Locator System should be developed. This can be done by adding NLETS and NCIC to the existing Federal Parent Locator System and by increasing access to the system by government child support agencies. Recent regulations by HHS require states to pay for information from the federal parent locator system, fees for use of the national system by any government law enforcement agency working on child support cases should be prohibited. Child support agencies need access to NLETS, this is the system that accesses all state Department of Motor Vehicle records and NCIC lists crime records. This can be accomplished by Congress designating child support agencies as law enforcement agencies.

FUNDING

Lack of staff and funding severely hinders child support enforcement efforts and acts as another barrier to low income families attempting to utilize government services for child support enforcement.

A new funding structure for states to ensure that they establish orders on a timely basis should be developed. This should include elimination of the federal incentive

payments to states, and the adoption of a 90% federal match with a requirement for state maintenance of effort at 1992 levels.

Priority of distribution on post AFDC cases should be "family first." Assisting families who become self-sufficient and free of the welfare roles should be a priority. The current system penalizes these families by paying the state government back support payments before the family receives back support payments due to them.

States and the Federal Government benefit through lower costs for AFDC (Aid to Families with Dependent Children) when child support is collected. As of the end of 1991 all states made a "profit" on child support collections: 66% reimbursement + 6% incentive payments + funds recouped for AFDC expenditures = more $ than what was spent on the child support enforcement program. They can afford to pay families First.

Example of making a "Profit" on Child Support Enforcement:

Expenditures of $27,086,106:

Reimbursement at 66 percent	(1)	$17,876,830
Collections:		
. AFDC 30,191,573		
Non-AFDC 57,562,494		
Amount qualifying for incentives [1]—60,500,000 @ 6 percent	(2)	3,630,000
Amount of AFDC recouped by State	(3)	9,226,858
Total income (1+2+3)		30,733,688
Total expenses		−27,086,106
Profit		3,647,582

[1] Incentives payments are based on AFDC amount × 2 if less money is collected on AFDC cases than Non-AFDC cases. This is often called the "cap."

Profit made on child support enforcement should be reinvested in the child support enforcement program.

FAMILY SERVICES

The government child support agency should list their client as the custodial parent and child. Child support enforcement services should be an entitlement. Families should have a right to effective and efficient services. New federal timeframes are a step in that direction, except clients were given no rights in the 1988 Family Support Act to obtain action on their case under the timeframes. Clients should be given a right to services and states should be required to meet timeframes. Noncompliance with timeframes should be a reason to request a state fair hearing. States should be prohibited from charging fees of more than $25 to families owed support.

Although child support and visitation are separate issues, a parent who is unemployed and cannot pay support, rights to visitation should be protected and enforced. ACES believes that it is wrong to deny visitation when support is not paid and we believe it is wrong to withhold support when visitation is denied. These actions harm the child. We know from our experience and from studies that 13% of the parents who fail to pay child support state they are withholding payments because the visitation is being denied. To prevent this from happening, we need an effective custody visitation dispute resolution program.

State courts should be required to have in place programs for resolution of custody and visitation problems. Prince George's County, MD, and Washington, D.C., are good models for these types of programs.

American Families entitled to support need an effective and fair enforcement system. The children need it to survive, to grow up secure and safe. The commission recommendations are not the solution to the problem of non-support. It is time to solve the problem non-support. We can do it, we have the resources and ability to do it. We need to set up a national system, that is administrative rather than judicial, and a child support assurance program to protect children from poverty. It is the right thing to do for our children.

Mrs. SCHROEDER. Well, I want to thank very sincerely the entire panel. Your testimony on the specifics of both the child abuse enforcement and the child support enforcement are very, very helpful to the committee because we need that in order to be able to move it.

Let me say too, we heard you loud and clear on Federal contractors and we will see if there is some way that that language can be put into the bill to expand it, and I feel a little silly up here asking you questions because obviously it is the choir singing choruses back and forth.

So let me reverse it and say, since the hour is late and since we still have another panel to go, I would hope that if you have specific ideas about how we might strengthen the bill, you would get them to the subcommittee staff this week. I mean we really are trying to move this train out of here, so we have got to have it right away. So those I would really appreciate.

Ms. Jensen, I hear your plea. Our feeling was that the IRS told us over and over again that they didn't have the staff, they would love to do it if they only had the staff, and the same with the problems of the Federal Government picking up the slack, they were afraid that that could be a real budget buster, and we didn't know where to get it.

But what the caucus did was then say OK, let's put everything that we have learned in the last 10 years together from this interstate commission, let's put it together in this massive bill, let's get everybody lined up, let's get it out of here this year, let's get the States up and on line, and then if we still can't do any better than we are doing, then I think we have no alternative but to go to the IRS system or some other form. But we have got to make sure there is staff to be able to enforce it, and I think you would agree with that too. To pass it over to them without proper staffing and everything—you were here as you heard about the RIF's going on in other agencies. That is not going to get us there.

So we have had some very painful discussions as to what we could do, but we decided we could go—you know, this is kind of a compendium of everything, it is complex, we are trying to plug every hole we can, and if this week you see some holes in here we haven't seen, such as Federal contractors, let us know so we can get it going, and we thank you all very, very much.

Ms. JENSEN. Mrs. Schroeder, if I could ask if you would please consider maybe talking to the Massachusetts Department of Revenue who was able to set up a system without adding additional tremendous amounts of staff, so that we believe that the national registry could be set up in the same way using them as a model without a great deal of needed additional Federal staff to do so. They did it mainly through automation.

Mrs. SCHROEDER. That is right.

Ms. JENSEN. And also when I testified in front of the welfare reform working group, the representative from the IRS who was present did tell us that it is technically possible to do this and that they would do it if they were told to do so by Congress, and we would sincerely appreciate your checking that for us.

Mrs. SCHROEDER. We will sure try and find a way to tell them to do that, but, as you know, their experience with automation on just tax collection hasn't been quite as good as we had hoped, and we had a few other problems to work out there, until we figure out how to solve that.

But meanwhile, if we get all these barriers out of the way, it certainly will make that much more efficient when we get to the point where we hope we can do that.

So thank you all very, very much, and we really sincerely appreciate your hanging in here all morning.

The final panel we have this afternoon are Mr. Stuart Miller, who is the senior legislative analyst from the American Fathers Coalition, and Mr. David L. Levy, the president of the Children's Rights Council.

We really thank you for hanging in all morning and afternoon, and we hope to be able to get you to lunch. But we will put your testimony in the record, and if you could summarize we would certainly appreciate it.

Mr. Miller, let us start with you. The floor is yours.

STATEMENTS OF STUART A. MILLER, SENIOR LEGISLATIVE ANALYST, AMERICAN FATHERS COALITION; AND DAVID L. LEVY, PRESIDENT, CHILDREN'S RIGHTS COUNCIL

Mr. MILLER. Thank you. Thank you for having me here.

Let me start with a brief introduction of who the American Fathers Coalition is and move from there. We are a national think tank comprised of lawyers, judges, mental health professionals, psychologists, doctors, pediatricians, that are concerned about positive father-inclusive policies on the Federal legislative level.

I feel a little outnumbered here. There has certainly been a lot of testimony in favor of your bill, and I'm here to suggest that there are some problems with the bill. I have outlined the key areas of section 401, sections 414, and 422—apparently 401 again, just to make sure—and have gone into a considerable amount of detail and fully documented and supported all of our analyses.

I think what I would really like to address is the attitude and the politics of child support.

When we ask businesses to move into poor neighborhoods, we give them incentives to move in there. We don't tell businesses that, "Unless you move into a poor neighborhood, we are going to penalize you." One of the things that I see that is blatantly absent from any of these proposals here today are incentives; it is purely punitive.

Over the last 10 years we have had very little success in child support compliance. Child support enforcement, financial child support enforcement, is extremely critical, and we do support compliance. However, I don't think that the punitive measures that we have used over the last 10 years have been successful, and to put a lot more money into a program and more punitive efforts into a program that is not working doesn't seem to be very prudent.

In drilling for oil wells with a company I was with in Texas, we did what was called developmental drilling. We drilled a hole after the big companies came through because we knew there was oil there. The big companies could afford to take the risk of going in and drilling a hole even though they weren't sure oil was there. Here we know there is not very much oil. The GAO has already pointed out that 66 percent of fathers, according to mothers, cannot afford to pay. The Manpower Demonstration Research Corp. out of

New York has shown that the majority of fathers could not afford to pay their child support.

Unemployment is the single biggest factor in noncompliance for support. I think the best way that we can address the issue of child support is to try to find out why the parents are not paying.

I worked with the White House Welfare Reform Working Group on several occasions, and the conclusions were that we know very little about the noncustodial population. How can we continue to legislate against an entire group of people, which is extremely large, without knowing very much about them? Are they just choosing not to pay, and why is that?

We have laws now for interstate flight to avoid child support where the Federal prosecutors, U.S. attorneys, can prosecute people thanks to the Hyde-Shelby bill. We also out of that same bill have the U.S. Commission on Child and Family Welfare. They are going to study some of these problems. We need to stop and say wait, these measures haven't been working, are we going to put more money into digging down a deeper well?

Sure, we might be able to squeeze some oil out of that shale, but I don't think we are going to hit the motherlode on this one, this is just more punitive measures that can be very costly, and I think that we really need to look at how do we handle other areas of our Federal business. We have incentive programs, we have studies to evaluate what the problem is. We just don't run off and legislate things where we don't even know—we know what we are trying to get, the end result, we definitely agree there, but we don't know how to go about doing it. It has been unsuccessful in the past, and I would ask that you consider some incentive programs and evaluate some of the other research that has come in.

Thank you.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF STUART A. MILLER, SENIOR LEGISLATIVE ANALYST, AMERICAN FATHERS COALITION

My name is Stuart Miller and I am the Senior Legislative Analyst for the American Fathers Coalition (AFC). The American Fathers Coalition is a national think-tank that is comprised of college professors, clinical psychologists, pediatricians, attorneys, law enforcement experts and business professionals. Our primary focus is to evaluate and promote positive father inclusive policies on a federal legislative level. Nearly every study indicates the importance of fathers in children's lives. Strong two-parent families are the cornerstone of our country and the decline of this unifying family structure has caused a heavy toll to be placed on society's shoulders, while we can ill afford to pay.

AFC supports garnishment of retirement pay of federal employees for child abuse payments if Congress can guarantee that it will be equally applied against women, to the same degree it will be applied against men. There has been a much considered move to eliminate the death penalty because of a disproportionate amount of blacks that are executed, compared to whites. We would respectfully request that similar safeguards are built into this proposed legislation, that would prevent a disproportionate amount of men that would be affected by this bill than women, especially in light of the fact that mothers are the primary abusers of children. Although the majority of parental abuse against children is perpetrated by mothers, they are seldom prosecuted for their violent behavior. It is even more rare that civil actions are brought against them.

If a parent murdered his or her own child: the murderer was most often the mother (55%) rather than the father (45%); 78% of child victims were 11 years of age or younger; mothers killed sons (64%) more often than they killed daughters (36%);

fathers killed sons (48%) and daughters (52%) with equal frequency; and the murder was preceded by child abuse in 79% of cases.[1]

I would also like to take this opportunity to thank the Congressional Women's Caucus for addressing a situation where mothers abuse children at twice the rate of fathers, and murder their children at a rate higher than that of fathers. It shows that they are concerned with issues that affect children and have chosen not to make this a "gender issue." I do however, after reading Representative Schroeder's "Dear Colleague" letter, ask this Sub-Committee to consider what it is Representative Schroeder is asking. In her letter she describes a movie where sisters are sexually abused by their fathers. (It is unclear from Representative Schroeder's letter how many fathers each of these girls have.) I have not seen this movie and am assuming that this movie is based on a true story. I am also assuming that the fathers who had a judgment entered against him/them have no resources with which the victims can obtain monetary satisfaction of their judgment, other than a federal pension, which he receives every month. If this is true, then the father in question only receives enough money to barely get by. Is Representative Schroeder asking that this be taken away from him, to satisfy a civil judgement, leaving him without enough to survive? Would he then be eligible for welfare? The answer is no. The pension attachment would not count as a reduction of income, and the father would be ineligible for welfare, because his actual income before assignment of his pension would be too high to qualify. If this Bill were in effect, this individual would be slowly starved to death. Starvation has typically been considered cruel and inhuman punishment. There are none among us that don't consider child sexual abuse to be one of the most heinous crimes known to man. Does that give us the right to torture? Some would say yes. A recent bill in West Virginia called for the castration of men who fell behind in child support. It did not pass. This Bill, not only should not pass, it should not even be referred out of this Sub-Committee if its authors are thinking in the vein of the West Virginia bill.

When looking at abuse statistics this Sub-Committee needs to take into consideration the overwhelmingly high rate of maternal abuse. As stated earlier, this Committee cannot, in good conscience, refer a bill to the full Committee if it cannot be sure that it will not be unevenly applied, if enacted.

[1] NCJ–143498. Murder in Families—Department of Justice—Infant and young child deaths are omitted from this report.

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on

H.R. 4570 - "THE CHILD SUPPORT RESPONSIBILITY ACT OF 1994"

Before:

THE COMMITTEE ON POSTAL OFFICE & CIVIL SERVICE;
SUB-COMMITTEE ON COMPENSATION & EMPLOYEE BENEFITS

OVERVIEW:

- Introduction to the American Fathers Coalition.
- Section 401 - Direct Wage Withholding.
- Section 414 - Relating to the attachment of public and private retirement funds.
- Section 422 - Relating to denial of federal benefits, loans, guarantees and employment.
- Section 401 - Direct Wage Withholding.
- Conclusion

***EXHIBITS:**

- *"New Equations for Calculating Child Support & Spousal Maintenance with Discussion on Child Support Guidelines"* by Roger Gay, June 27, 1994.
- Transcript of Oral Testimony of Ronald K. Henry, Attorney-at-Law, Before the Sub-Committee on Human Resources, Committee on Ways & Means, United States House of Representatives, June 30, 1992.
- *Executive Summary - "Minority (Dissenting) Report of the U.S. Commission on Interstate Child Support"* by Don A. Chavez, MSW, L.I.S.W., June 10, 1992.
- *"Minority (Dissenting) Report of the U.S. Commission on Interstate Child Support"* by Don A. Chavez, MSW, L.I.S.W., June 10, 1992.

* Exhibits will be submitted to the Committee in their entirety, and incorporated herein, by reference

Submitted: July 12, 1994

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H.R. 4570 - "THE CHILD SUPPORT RESPONSIBILITY ACT OF 1994"

Before:

THE COMMITTEE ON POSTAL OFFICE & CIVIL SERVICE;
SUB-COMMITTEE ON COMPENSATION & EMPLOYEE BENEFITS

My name is Stuart Miller and I am the Senior Legislative Analyst for the American Fathers Coalition (AFC). The American Fathers Coalition is a national think-tank that is comprised of college professors, clinical psychologists, pediatricians, attorneys, law enforcement experts and business professionals. Our primary focus is to evaluate and promote positive father-inclusive policies on the Federal legislative level. Nearly every study indicates the importance of fathers in children's lives. Strong two-parent families are the cornerstone of our country and the decline of this unifying family structure has caused a heavy toll to be placed on society's shoulders, which we are all realizing is difficult to cope with.

Even when parents are divorced, continued involvement of both parents, equally sharing the rights and responsibilities of parenthood, in the children's lives, is at least as desirable as we hold it to be in intact families. Children of divorce are all the more vulnerable, and not just to economic risks; so are their parents. Ignoring the needs and vulnerabilities of such children at the sole exclusion of how much money one parent is entitled to receive from the other, in the name of child support, without any accountability, without regard for the fundamental due process rights and liberty interests of the payor parent being increasingly hounded by a system of income transfers far more draconian than any other ever devised, is at the very least demeaning to the children.

We at the American Fathers Coalition view with great alarm the hysteria with which the principle of "supporting one's child" is being dramatically revised without much social debate; a stereotype being created and demonized with increasingly loud propaganda; and the police powers of the state being brought to bear in private disputes far beyond that justifiable in the name of societal interest. My testimony below touches upon only selected portions of the proposed legislation which we feel to be unfair, unworkable, or against the interests of children. I urge all you honorable members of our Congress to remember that diminishing a parent diminishes the child, and that unless you exercise some brake on the riotous frenzy with which "child support enforcement" is being transformed into a privatized welfare scheme, taxation without representation, one-on-one retribution for the "crime" of parenthood, we will have far, far more serious problems to face in the years to come. Time is certainly ripe, if it was not already, to take a calm look at the problems of parents and children in our society and devise solutions which really help everyone, or most people, rather than create more misery or merely redistribute it.

Section 401 - Direct Wage Withholding

The proposed legislation is unduly vague, overly restrictive, unfair to the employers and child support obligors, and creates unwarranted interference in the system of due process rights developed over this country's history.

1. I submit that the phrase "regular on its face" is vague, and creates a potential for fraud and mischief. I know of at least one case where the District of Columbia Superior Court's Family Division staff issued a withholding order across state lines even when it had no statutory or regulatory authority to do so, the underlying support order was not enforceable via withholding even within the District's borders, and such direct service patently violated District's own statutes and regulations as well as those of the US. The employer in question received the withholding order, was misled into thinking that he was required to comply with it, and only

years later was informed, by the same staff of the DC court which had kept sending him such orders over the years, that he did not have to comply with the orders, after all. He stopped immediately, and the payor challenged the withholding orders before the DC court. The court found that violation of statutes was merely "technical error" and that the employer had "voluntarily" complied with the withholding orders (which had threatened him with penalties if he had not complied). Was each one of these withholding orders "regular on its face"? Not under the current state laws, which make them unrecognizable outside of the jurisdiction which issued them. Under the proposed legislation, any formidable-looking but real court order, or for that matter any piece of paper typed up and made to look like a court order, would qualify as "regular on its face".

The problem I cited in the case above, of "interstate direct service", is far more pervasive than a single case, and is illegal, as recognized by the US General Accounting Office, the Interstate Child Support Commission, and the drafters of UIFSA. It arose because of the IV D agencies' deliberate disregard of applicable law and regulations, motivated by the Federal incentive payments, entrepreneurial zeal (as would certainly be expected when you create a system of perverse incentives), and complete lack of oversight by the Federal Department of Health and Human Services when it came to enforcing its own regulations. Rather than "strengthening" the child support enforcement system, the direct withholding provision of the legislation is a trick to legalize the patently illegal practice of the IV D agencies.

Although the phrase "regular on its face" has been in legal use for a long time, it is in the context of applicable law of a single, particular state. If an employer receives an order from a court or an agency of his own state, he can easily verify it; in case of problems, that employer has the privileges and immunities of the state in which he does business. Even when standardized withholding forms are mandated, there is a risk that an employer is simply unable to determine whether the order is, indeed, "regular on its face", or that such determination would cause him a business expense he would rather not incur.

2. I am also disturbed by the "three day" employer compliance requirement under Section 401. This is an impractical burden to impose on employers who would face a $1,000 fine for non-compliance with this section. In the absence of a standardized withholding form or applicable regulations, I cannot even tell what "compliance" might mean under this section. If it means deduction and forwarding of monies to some third party, at the very least it would reap havoc with employers' timesheet and paycheck cycles, which are often bi-weekly or monthly.

The employer is not given the opportunity, or the responsibility, to verify the request for wage withholding with the employee or the government that has requested the withholding. Yet, he is expected to withhold wages from an employee without question or face penalties. This type of legislation will have a negative impact on all employers and employees. As an employer, I may be disinclined to employ anyone who has children, on the off chance, that a child support order, some time in the future, may be placed against him or her because my company may be placed at risk for non-compliance.

Even so, the expectation that any and every employer can be reasonably expected to within three days, not even three "business" days, start issuing checks of the amounts asked for, belies ignorance of business world's realities. The Federal government itself has, for example, shown a tremendous ineptness at processing paper work, often delaying payments to its contractors hundreds of days beyond the due date. How the government can expect private industry to perform at such a drastically increased speed is somewhat puzzling, to say the least.

The possible counter-argument that a custodial parent just does not have the luxury of anybody using any standards of reason, prudence, or fairness, and must be paid by whoever and whenever, upon demand, would only demonstrate the utter lack of balance in a debate on child support reform that is sorely needed but choked off by the abortive attempts of the zealots who see non-custodial parents merely as indentured laborers.

To cite an example of this inappropriate policy, allow me to offer the case of a father, who is a DC corrections officer at Lorton, and who lives in Virginia. His paychecks come from Washington, DC, his child support is withheld in Washington, DC, and transferred to Virginia

where he and the mother of his child live. He was injured at work and received worker's compensation which was substantially lower than his regular pay yet his child support was not lowered to comply with the child support guidelines (even though, under the language of the withholding orders from DC, his employer was required to inform the DC court of change in his income and further that any such information is usable by the DC court in upward or downward modification, beginning with the date of notice). Because the judge's hands were tied, he could not retroactively modify the child support thereby creating a huge arrearage. When able to return to work, the father was promptly hauled into court for having not complied with the child support order and arrearages were established. He entered into an agreement whereby the regular child support would be withheld from his paycheck and an additional amount towards the arrearages. The arrearages have long since been paid, yet the DC government, his employer, has for several months now been still garnishing his wages with the current child support and non-existent arrearages! To date, the employer has wrongfully withheld thousands of dollars of the father's money, which they will not return to him or credit toward future support payments. Its excuse is that it cannot stop the additional, wrongful amounts because of the length of time it takes to process the paperwork. Granted, this sounds like an unusual case but it is, unfortunately, commonplace. I believe the DC government is liable to the father for all improper withholdings, under Federal as well as DC Municipal regulations, and may also be liable for additional damages. DC government may well want to expose itself to such liabilities (from both sides, since it is only another part of the same government which has failed to modify the withholding order), but I doubt any private employer would. Why should I, as an employer, expect that a withholding order that I receive today is legitimate and I must comply without question or face penalties?

3. Under this same section, service by first class mail is offered to be sufficient service. I do not mean to be facetious, but given what we know about the quality of first class mail service right here in DC, I wonder how anyone can put so much reliance on prompt and proper service. At a more serious level, I believe the appropriate standard should be the rules of service of process within the jurisdiction of the employer. After all, the employer is only bound by the laws of his jurisdiction, is not a party at interest in the proceedings between two parents or between one parent and the IV D agency. I also urge that, at the very least, the applicable rules of service of process take into account the laws which specify who in a corporation is entitled to accept service, and that if first class mail is to be used for withholding orders, certified mail with signed return receipt requested must be mandated. To flout or legislatively erode the laws and rules of service of process is a dangerous and slippery path, inviting constitutional challenges. Employers would either risk considerable liabilities for violation of due process rights, or take the safer course of discriminating against child support payors. Even if the child support enforcement system (which a cynical friend of mine characterizes as Maternal Revenue Service) were to be made merely as routine as the Internal Revenue Service, we need to include similar considerations of simplicity, protection of individual rights, and enforceability as we do with our tax system.

4. I also find it extremely troubling and confusing that the proposed legislation absolves the employer from liability for "wrongful withholding". I may be naive, but I wonder if the drafters of this particular section meant to hold the employer harmless *except* for "wrongful" withholding, even while failing to define "wrongful". If withholding is "wrongful", and if the employer is not liable, then just who is? The court or the administrative agency which had some low-level staffer signing off in the name of the Clerk of the court or the director of the IV D agency? The unintended beneficiary of the support order, namely the custodial parent? Or is the proposed legislation suggesting that "wrongful" withholding can take place without anyone being responsible, since non-custodial parents are fair game to the point of last drop of their blood?

I suspect, once again, that the legislative intent here is to perpetrate a slimy trick, along with legalization of the heretofore illegal direct service of withholding orders (except in case of states which already allow such service, potentially in conflict with US constitutional law). To go back to the first example I cited of DC court's staff direct interstate service, the court has declared that its staff's violation of statutes and regulations was "technical error" even though rather an example of gross negligence and malign encroachment on the payor's and the employer's procedural as well as substantive due process rights. One of OCSE's own publications, written by the current assistant to the Deputy Director of the OCSE, has expressed

the view that both the employer and the agency which issued the order are liable, to the payor, for violation of due process rights and other laws and regulations. Yet, nobody seems to care that IV D agencies and their contractors flagrantly abuse their powers, affording the non-AFDC custodial parents free legal service and debt collection service which is the main reason for the dramatic increase in the Federal expenditures on "child support enforcement".

I offer that before the Congress goes on increasing the budgets and the authorities of the OCSE and via it, the State IV D agencies, a careful, critical look be taken at the operations of these agencies over the last ten years, their accomplishments and failures, and at least start thinking that non-custodial parents are not the only ones with responsibilities (the financial part of which is the only aspect the government seems to be concerned about enforcing, at the cost of robbing them of the ability to perform many other responsibilities) and liabilities.

5. Although some of you may violently disagree that both parents have equal rights or that the IV D agencies should provide equal level of services to either parent in order to enforce the law of the land, the sad fact is that only one class of parents is provided such services, at the taxpayer's cost. Thus I find it amusing that proposed legislation asks that "if an employee requests a hearing... the State in which the hearing is held shall provide appropriate services.. to ensure that the interests of the individual to whom the withheld income is to be paid are adequately represented." For one, this language, as elsewhere in the proposed legislation, does away with the established terms such as "payor" and "payee", or "obligor" and "obligee", or "absent parent" and "support recipient", substituting merely "employee", thus clarifying that a noncustodial parent is merely an "employee" in the service of the custodial parent. Nonetheless, I ask that the "appropriate services" referred to be made available to both classes of parents, without discrimination. To do otherwise would at least in principle violate the principle of equal protection under the law. In each of the two cases I have cited above, the fathers have no resources to represent their claims or interests. In one of those cases, even as the IV D agency claimed it had nothing to do with the case, the DC Office of Corporation Counsel provided legal brief in support of the IV D agency and its contractor, arguing, inexplicably, that the father did not have a standing to bring a motion to quash the withholding orders because he was *not* the real party in interest, even as more than $40,000 of his wages had been wrongfully garnished over three years and paid to support a mother who was employable but unemployed, remarried to an unemployed man with whom she had two more children! All this in the name of the said father's two children, who were made to live with the mother and her new family in a one bedroom apartment!

I must also take exceptions to the clause "based on claim of a mistake of fact" since it makes it appear that "mistakes of fact" are the only grounds upon which an employee may contest withholding. Under the current law, jurisdictional defenses are also available to a non-custodial parent, as also against fraud in inducement and similar other defenses (including validity of the child support order) which have been upheld by State courts over tens of years of evolution of child support case history. The non-custodial parents must also be made aware of their rights and defenses, just as custodial parents are via advertisement of IV D services, in some places (like Los Angeles) at street corners and telephone poles, and the IV D agencies must provide protection to non-custodial parents as well. Just because their children are taken away from them does not diminish their humanity and citizenship, any more than children's custody *per se* enhances those of the custodial parents. The non-custodial parents must be entitled, concurrently with their employers, personal service of withholding orders, via certified mail, signed return receipt requested, and must have a reasonable amount of time within which they may contest the withholding orders. The non-custodial parents must also be afforded the right to contest withholding prospectively at any point in time, if it emerges that they have defenses or remedies they were not entitled to or aware of at an earlier point in time.

6. Under the section on "Uniform Withholding Order", I find it disturbing that the order is required to contain merely "the name of the individual whose income is to be withheld, the number of children covered by the order, and the individual *or* State to whom the withheld income is to be paid." (emphasis added). At the very least, I ask that the payee's address, and the names and addresses of the children, be included in the order. The non-custodial parents have a right, unless otherwise abrogated by judicial order, to know where his children are, or, Heaven forbid, if they are even alive! Under the proposed language, a State may send a

withholding order to an employer to take monies out of the paychecks of a Mr. X, without telling him where that money is going, for whose alleged benefit! This is plainly ridiculous.

There is another aspect of uniform withholding the sponsors have overlooked. Under the child support guidelines of almost all, if not all, states, child support awards are based on *both* parents' income levels and are prospectively modifiable upon a showing of change in circumstances, including each party's incomes. Under the uniform withholding order, it seems to me that the initiating State and the custodial parent would always have a ready and accurate access to income information of the non-custodial parents, who in turn would have no such knowledge, absent a new judicial proceeding. To go back to my analogy of child support as a paternity tax collected by the Maternal Revenue Service, I submit that we hold our own government, including you members of the Congress, to a far higher standard of accountability and financial disclosure, for our tax monies than that for custodial parents as contemplated under the proposed legislation. Put another way, I submit that holding custodial parents to no standards at all, nor any requirements of even disclosing their addresses and incomes, is ultimately demeaning to the custodial parents. I do not think the custodial mothers of this country really would like to be seen as those in need of such overly patronizing attitude by their government.

Section 414

Section 414 relating to the attachment of public and private retirement funds is another example of the erosion of due process rights based on the misinformation campaign that is associated with child support non-compliance hysteria. This section of the bill will permit an individual to attach a public or private retirement plan of another individual without the requirement of a separate court order. This in itself may not sound too alarming, but when considering the other provisions of this bill, which will be before other committees. These provisions will permit the establishment of child support as easily, if not easier, than the efforts that are required to obtain a temporary restraining order. These provisions even go so far as to suggest that child support should be established against an alleged father, administratively, based solely on the affidavit of a mother without notice to the father. If this method of child support establishment were to be approved, anyone who obtained an order in that manner would also be able to attach any public or private retirement without a separate court order. This encroachment into due process rights that primarily affect only one gender is unacceptable.

Section 422

Section 422 - Denial of Federal Benefits, Federal Loans, Guarantees, and Employment to Certain Persons with Large Child Support Arrearages.

Under this section $1,000 is defined as large. It is a large amount of money to a parent who is trying to support a child on a very limited amount of money, however, it is not a large amount of money when talking about loan amounts or the monthly income of a federal employee. How can it be in the best interest of a child to deny a parent the opportunity to borrow money to help pay for the child's expenses or to get a job to help pay for the child's expenses merely because they have fallen behind in their child support for any reason. I refer back to the case of the father who was injured at work, due to no fault of his own and fell behind in his child support because he was forced to pay child support at a higher level than was meet, just, and fair. Under this bill, a person who is behind $1,000 in his child support may not accept a Federal job. This discriminates against individuals based on a monetary judgement that has been imposed against them and is most likely a violation of the Equal Protection Clause of the 14th Amendment.

Conclusion.

This bill represents a very advanced stage in the political developments surrounding the issue of child support. Before moving to this stage and beyond, as I know Congress is considering doing, it is imperative that we step back and review the reforms that have taken place over the past decade. The cornerstones of reform are the Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988. If the child support reforms mandated in those bills had been carefully, competently, and properly implemented, the

character of my testimony today would be much different. In fact, if child support reform had arisen from honest discussion, I would probably have found it unnecessary to testify at all.

Now, at this rather advanced stage of political activity, it is necessary to ask why don't parents pay court ordered support? The White House Welfare Reform Working Group, in which I participated, pointed out that very little is known about the non-custodial population. We already know that the number one reason for non-compliance is unemployment. We now need to discover whether secondary reasons for non-compliance are voluntary, if not, what we can do to correct these situations before imposing more severe punitive measures on a segment of society we already have admitted, "we know little or nothing about."

In 1984 when the Child Support Enforcement Amendments were passed, many state courts were using child support tables and formulae as rough guidelines to assist them in making consistent and reasonable judgments. This was a reasonably activity. Formulae were also in use in administrative courts handling cases in which the recipient of private child support was partially dependent on public assistance such as AFDC. Non-dependent parents had child support awards decided according to rational doctrine based on children's needs and the relative ability of each parent to meet those needs. Parents receiving government assistance had their awards based more on the ability of the paying parent to offset AFDC payments.

The two systems were not compatible. In 1981, for example, the Oregon Supreme Court was asked by a previous recipient of AFDC to apply the AFDC formula in a case that had been decided according to non-AFDC child support law. The Court rejected the request, saying that they would "limit the application of this particular scale and formula to the same cases to which the legislature limits its' application in "The Marriage of Smith, Or 626 P2d 342 (1981).

So we in fact know that federal reforms were not aimed at recipients of public assistance. That group was already subject to rigid formulae for the award of child support. Although there is no nexus between awards for independent families and any established federal interest, the new rules were used to increase awards to middle and upper income mothers.

What is child support?

Previous to federal child support reforms, the doctrine established in the states said that the amount of child support awarded would be based on the needs of children and the relative ability of parents to pay. It is important to point out that the term "needs" in this context does not refer simply to the most basic, or subsistence level needs of children. The understanding of what children "need" was dependent upon such factors as the parent's ability to provide, variations in parent's spending habits, and the division of time children spent with each parent.

No understanding of the established doctrine of child support would be complete without understanding its central balancing principle. Both parents have an equal duty to support their children. One legal commentator, respected by people on all sides of this discussion, claimed there is a Constitutional mandate for the "equal duty principle". (Doris Freed) This single guiding principle forced consideration of the many factors that had been routine until established legal doctrine was displaced under the mandate of the Family Support Act of 1988.

It is important to recall that there has never been a federal mandate, nor has there been compelling testimony, that there was any need to alter the fundamental doctrine of child support. Supporters of higher awards have always contended that the need for child support formulae arose because judges had applied existing law unfairly and inconsistently.

If you have studied the history of politics and literature of child support as fully as I have, you are aware of studies that concluded that judges were extremely inconsistent in the amounts they awarded. This was probably the most important motivation for the use of formulae. If you study carefully enough, you know that the researchers making these claims used the payer's income as the only criteria for making an award and did not account for the many factors that reasonable come into play in making a just and appropriate award. In other words, claims of inconsistency were based on a doctrine inconsistent with established state law. One must wonder what those researchers must have been thinking. Why would anyone have an

interest in the finding that orders established under state law did not coincide with an imaginary doctrine?

In the early 1980s, there were a few contributions to the literature attempting to create comprehensive formulae based on existing doctrine. The work of Maurice Franks and Judith Cassetty were among the most notable. These were the first steps toward building plug-in mathematics that could displace must of the work of human judgement. This approach was never fully explored and stopped prematurely. Nonetheless, the Family Support Act created a requirement for courts to apply what did not yet exist.

The work of Franks and Cassetty was brushed aside in the political process of implementing the Child Support Enforcement Amendments and the Family Support Act. What has displaced traditional doctrine are arbitrary formulae. Robert Braid explained the problem well in The Making of the Deadbeat Dad. (Trial Lawyer, March 1993) Dr. Braid is a professor of Accounting, Economics, and Finance in New Jersey who decided to work out for himself what a just and appropriate child support award would be in his own case. Although New Jersey is a state that has made many valiant efforts to improve the law and practice of domestic relations, parents there suffer from the same problem found in other states. They have no legal definition for "child support". They have only a mathematical formula which lacks a rational basis for analyzing a particular case.

Our understanding of what "child support" is today comes from two sources. The first is our understanding that, on the whole, judges in state courts did a reasonable job of applying established legal doctrine in the award of child support. That is to say, that while it may be argued that some judges may have ordered awards that were too low, other judges compensated by ordering awards that were too high. Simply understanding that the presumptive application of formula in use today dramatically increased child support awards, leads to the knowledge that awards have been made arbitrarily high. This is one of the few relevant facts that can be accurately decided, based on averages.

The second source is the continued work toward creating a science and credible technology of child support that has taken place more recently without the benefit of federal funding. One of the products of a five year project known as the Project for the Improvement of Child Support Litigation Technology, presents new formulae for child support and alimony based on traditional child support law. I have a copy of the report by independent researcher, Roger Gay, entitled: New Equations for Calculating Child Support and Spousal Maintenance With Discussion on Child Support Guidelines.

The need for this project came from the new mode of application of child support guidelines defined in the Family Support Act. Today it must be presumed that the amount of child support calculated by state guidelines is the correct amount to be awarded. In contrast, the technology available was designed for use as simple guidelines pointing a judge toward a starting point or benchmark. This dramatic change in application dictates new engineering, evaluation an redevelopment of fair and equitable methodologies for calculating child support, yet never has a single dime of federal funding been available for the purpose of advancing child support award technology to properly meet the new requirement.

I understand that Mr. Gay has also conducted an investigation to determine if any state now has a rational legal definition for child support. He found none. This problem has been reported to the Clinton Administration and to various subcommittees in Congress. He has also recommended specific amendments to federal law that would correct the problem.

The question is asked in the abstract of his report, whether awards made under current child support formulae contain a hidden margin of spousal maintenance. The report presents the first mathematical models sophisticated enough to answer this question accurately. Through example Mr. Gay shows the amount of spousal maintenance included in child support awards made by use of current formula. He then demonstrates that it is possible to define a standard of living target for a recipient household and meet that target exactly by use of relatively simple formulae for child support and spousal maintenance combined.

In addition to the work of Mr. Gay, Dr. Braid and others the Department of Health & Human Services has recognized shortcomings within the existing "shared incomes model" that are in part responsible for non-compliance and have released a new model, which is currently being printed. The first printing has already been spoken for and there is an extensive waiting list for the second printing.

What needs to be suggested today, and in hearings for every one of the more than 80 bills advancing the politics of child support, is that we must slow down. We must back up and look at what has been done already. We must review. We must put much more effort into developing a quality system than we have been putting into moving further and further ahead with one that lacks a rational foundation.

Although well intentioned, the "Child Support Responsibility Act of 1994" is an effort, independent of the Department of Health & Human Services, and in spite of their recommendations, that is based on enforcing an expensive, outdated and ineffective child support enforcement system that has been a dismal failure. The American Fathers Coalition respectfully suggests that this Committee postpone referring this Bill to the Full Committee, to afford an opportunity to review the facts contained herein and those resources available to it through the individuals and agencies referred to in my testimony. A move in any other direction would have to be based on a knee-jerk reaction to the hysteria that has resulted from a campaign of misinformation and/or an act of "conscious disregard."

Attachments to the testimony of Mr. Stuart A. Miller

TRANSCRIPT OF ORAL TESTIMONY OF RONALD K. HENRY,
ATTORNEY-AT-LAW, BEFORE THE SUBCOMMITTEE ON
HUMAN RESOURCES, COMMITTEE ON WAYS AND
MEANS, UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 30, 1992

Mr. Chairman, Committee members, thank you for providing the opportunity to speak to you today.

I think I'm probably the only witness at this table who has not been divorced, who doesn't have a personal story to relate. I'm happily married with three beautiful children. But I am also an attorney who sees many divorces and who knows the disaster of divorce. What I have done in the *pro bono* work of my practice is to seek ways to encourage family formation, family preservation, and the demilitarization of divorce by trying to isolate, understand, and prevent some of the unintended consequences that often flow from well-intended policies.

We know that children are born with two parents. We know that children want, love and need two parents. There is now, after many years of debate, an agreement across the political spectrum, from liberal to conservative, that the winner-take-all system that we have developed in the domestic relations courts simply is not working. We take two loving parents, we walk them into court at their most emotionally distraught and weak moment, and we say to them, "Here are some weapons, fight it out, the last one left standing owns the child." In the end, the loser not only loses the companionship of the child but is also ordered to make payment for services that the loser wanted to provide in his or her own home. Child custody is the only job in America where the losing applicant is told to pay the winner's salary.

We need to start working on a system that encourages the continued involvement of both parents after the divorce just as it existed during the marriage. We need to get away from policies that encourage family breakdown. Today, you're being asked to look in isolation at one facet of the problem, child support. I submit to you that this is the wrong way to go about it. If you continue to put band-aids on wounds, if you continue to administer tonics for symptoms, all you will do is cover up and suppress the symptoms. You won't get to the cures. You won't recognize how the pieces fit together. The distorted stereotypes and the anecdotes that have driven our band-aid policies result in some of the disasters that you'll hear about shortly.

You cannot approach these issues as if there's a magic bullet called "child support enforcement" that is going to solve the problems of families. What you need to do is look at the Orders that you are being asked to enforce.

Sylvia Folk is a non-custodial mother who will tell you that she spent 72 days in jail because, although the judge knew she didn't have the money, he was going to hold her until either her family or her church bailed her out. In the name of "enforcement," we have allowed a return of debtors' prisons. This is a sick, immoral corruption of our domestic relations

court process. You'll hear from Jim Wagner, a custodial single father for 10 years who supported four children in his own home simply from the joy of having those children around him. Last year, two of the children were transferred to the custody of his ex-wife. He now is required to pay child support for those two children even though he willingly and freely supported them in his own home without charge for ten years and even though he still has the two other children in his home today.

Everyone has seen the Bureau of Census statistics saying that 50 percent of support is paid in full and 25 percent is paid only in part. Interesting, but false. Don't take my word for it. Look at the research, like that of Professor Sanford Braver, who has analyzed the domestic relations data coming out of the Census Bureau and found incredible methodological errors that are causing distortions of public policy. The Census Bureau only asked the custodial mothers, "How much do you receive?". It didn't ask the non-custodian, "How much do you pay?" and it didn't check the court records to see how much was owed. Even worse, the Census Bureau did nothing to control obvious sources of false data. For example, nothing was done to correct the known tendency of welfare recipients to underreport outside income sources. Even the Department of Health and Human Services has acknowledged this tendency in other testimony before Congress.

Child support enforcement is already the most punitive form of debt collection practiced in this country. We intercept tax refunds, we impose liens, we throw people in jail, we ruin credit reports, we take away professional licenses, we go on and on with enforcement techniques and a billion dollar enforcement bureaucracy that exists for no other form of private debt collection. Yet, despite all of this, people tell us that not enough money is coming in. I submit to you, Committee members, the time has come to ask the question "why?". How many of these people are unemployed? How many are disabled? How many are supporting second families? How many are engaged in civil disobedience because they haven't been able to see their children? The Census Bureau data doesn't tell you that; it lumped everybody together. You heard from one of the witnesses earlier today that the data failed even to exclude obligors who are dead. People who are dead were thrown in and reported as non-compliant obligors; sort of the ultimate "deadbeats." You simply can no longer allow junk science of that nature to be the basis for your policy decisions.

We know that there are three principal predictors of child support compliance: the fairness of the original court order, the access of the non-custodian to the child, and the employment stability of that parent after the award is entered. Buried in the Census Bureau data was a very interesting fact that got no publicity from the special interest groups or from the bureaucracy that administers the $1 billion Federal enforcement program. According to a General Accounting Office review of the Census Bureau data, 66 percent noncompliance was reported by the custodial mothers themselves as "father unable to pay". That fact simply has been lost in your policy debate. You are not looking at the reality of the people who are impacted by demands for still more draconian enforcement methods.

Another item from the Census Bureau data that got no play in the media is the fact that access to the child makes a phenomenal difference. Even with its methodological flaws, the Census Bureau found that over 90 percent of child support was paid in joint custody cases -- simply allowing both parents to continue to be parents to their children. You need to begin shaping a public policy that reflects the realities of human

nature. People support children because they are parents, not because they enjoy the role of anonymous cash donor.

Bias and stereotype no longer have a place in public policy. Twenty years ago, we were blaming all our problems on the "welfare queens." We figured that if we just got tough with the "welfare queens," our problems would go away. They didn't go away and we didn't get any more sophisticated. Instead of looking for the root causes of the problems, we just moved to a new stereotype. Now, getting tough with the "deadbeat dads" is supposed to solve all our problems. The magic bullet isn't there; it's not going to work.

Too often in public policy matters, we don't want to know the truth. We allow ourselves to be guided by junk science. In fact, there.'s only one thing in this morning's hearing that made me angry. During the course of the testimony you heard a little while ago, there was a reference to a new "preliminary" study of taxpayers in Massachusetts. That study was designed to persuade you about the availability of assets for child support. The only thing it showed, however, is that some citizens in that state have money. The study only counted people who were wealthy enough to have income tax obligations. It did absolutely nothing to capture data about the people who were so poor that they did not file tax returns. The study didn't say anything about whether the people who had some money were in fact paying or not paying their child support. All it said was that some citizens in Massachusetts have money. Big deal! What does that prove about your child support problem? The study didn't do anything to match the people who had money with the problem of child support compliance. There was no matching between payment or nonpayment and the existence of assets. What you were told, though, is "we've got data that there's money out there and we've just got to get tougher about collecting it." Junk science needs to stop driving policy in the child support industry.

One of the difficulties we've had is that special interest groups too often don't want to collect the data. A few years ago, the Department of Health and Human Services began a study called 'The Survey of Absent Parents." It was done on a pilot study basis in two states. When results came back negating the stereotypes about uncaring "deadbeats," HHS killed the study. I had to use the Freedom of Information Act just to get the pilot study results and the paper trail of the assassination of this "Survey of Absent Parents." Wayne Stanton, the head of the support bureaucracy at that time, didn't want the data to come out.

Members of the Committee, I ask you to recognize that until we have fairly established custody, visitation, and the amount of support, there is no moral authority for the enforcement of support. Over the years, Congress has developed an ability to discern the self-interest, self-aggrandizement, and instinct for self-preservation that afflict the military/industrial complex and other bureaucracy/special-interest group alignments. The time has come to apply that same wisdom to the child support industry. There is no basis for further enforcement initiatives by this Congress until the distortions of past stereotypes and the concealment of data have been corrected.

Thank you.

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TESTIMONY OF RONALD K HENRY, ATTORNEY-AT-LAW, BEFORE THE SUBCOMMITTEE ON HUMAN RESOURCES, COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES, JUNE 30, 1992

I. Introduction

As we gather to discuss American families today, social science researchers continue to confirm what societal tradition and intuition have told us all along; children need the active physical and emotional involvement of two parents, a father and a mother. For every social problem that we experience - teenage pregnancy, drug abuse, poor school performance, low self-esteem, depression, suicide, or any other item on our list of social ills -- research confirms that family breakdown and, particularly, father loss are primary causal factors. As acknowledged by groups of all political persuasions, from the conservative American Legislative Exchange Counsel to the liberal Progressive Policy Institute to the National Commission on Children, a political consensus has emerged to acknowledge the reality that public policy must begin to focus upon issues of family formation, family preservation, and demilitarization of the divorce process where parental separation cannot be avoided.

Unfortunately for children, public policy initiatives too often consist of bandaids and tonics designed to cover or suppress individual symptoms while failing to diagnose or cure the underlying disease. Too often, the tonics have some unintended consequences and side effects which exacerbate the original disease or stimulate new ones.

The nation has spent thirty years treating the symptoms of family breakdown in ways that many believe have unintentionally advanced the dismal trend. We know that marriage is the best path to avoid or escape poverty, yet we punish family formation through our social service programs and tax laws. We know that the three best predictors of child support compliance are (1) the fairness of the original order, (2) the obligor's access to the child, and (3) the obligor's work stability, yet we have proceeded on a simplistic idealogy of "more is better" in all matters of support amount and punitive enforcement. We know that entrenched special-interest groups have a vested interest in magnifying their own selfimportance through repeated claims that child support is paid only 50% in full and 25-o in part, but we have failed to challenge the accuracy of the claims and have failed to challenge the special-interest groups' strange silence about the fact that the same database also reveals the following:

Child support compliance was 90.2% in cases of joint custody;

Child support compliance was 79.1% where access to the child was protected by a visitation order;

Child support compliance was only 44.5% where neither joint custody nor access were protected by an order;

In 66% of the non-compliance cases, the mothers themselves reported that the reason was rather unable to pay.

The Committee is to be commended for authorizing these hearings. The issues at stake for American families are too important to allow policy to be based upon stereotyping, anecdotes, and special-interest group "spin control". Congress needs thoughtful, dispassionate analysis of the role of Federal policy in family breakdown and parent absence. Before Congress considers more mechanisms for federal enforcement of state domestic relations orders, it needs to better understand those orders and the people against whom

1 Child Support and Alimony: 1989; Current Population Reports, Series P-60, No. 173. Bureau of the Census, September 1991. Interstate Child Support: Mothers Report Receiving Less Support From Out-Of-State Fathers, January 1992 General Accounting Office, GAO/HRD/92-39FS, at page 19.

enforcement is sought. Is noncompliance simply bad behavior or are we making unfair demands? It is my personal belief that there are far more "thrown-away parents" who are victims of policies that discourage their involvement except as anonymous cash donors than there are "runaway parents." This is not the time for more band-aids and tonics. It is a time for Congress to take to heart the physician's creed to "do no harm."

II. The Pendulum Of Public Prejudice

Throughout most of our nation's history and in much of the world today, the law contained a strong or conclusive presumption that sole custody would be awarded to the father in the event of family dissolution. The early feminist meeting in Seneca Falls, New York in 1848, for example, included the fact that fathers automatically received custody as a principal complaint in its Declaration of Sentiments.

Prior to the industrial revolution, most parents worked side-by-side with the children on the family farm or in the family trade. Children were nurtured and educated through almost continuous contact with both parents and child-rearing books through the 18th and mid-19th century emphasized the father's centrality in raising the children and preparing them for the adult world. As the industrial revolution accelerated through the 19th century by pushing more fathers out of the family enterprise and into the factories, social theorists began to exalt rigid sex role separations with father as external wage earner and mother as home-bound nurturer. Still, the pendulum swung slowly and the pro-feminist philosopher John Stewart Mill observed that, while the idea was interesting, the public was insufficiently prepared to discuss mother custody.

Continued industrialization, coupled with the then perceived virtue of getting women out of the paid work force in order to create jobs for returning servicemen at the end of World War I, culminated in a full-blown "cult of motherhood" and the establishment of the "tender years doctrine" in most states. The pendulum of public prejudice, having swung from one extreme to the other, then enforced automatic mother custody with the same rigidity as the earlier enforcement of automatic father custody.

In approximately the last 20 years, the pendulum has begun swinging toward a more centered position and most states have abrogated the tender years doctrine through statute or court decision as a violation of equal protection. Virtually all states now give at least lip service to the principle that custody decisions should be made in accordance with the "best interests" of the children rather than by reference to the parents' gender. Although the legal regimes vary, it is now recognized in all states that either the mother or the father can "win" the battle for custody of the child.

III. What We Know About Children's Needs

While the law was advancing to the point of recognizing that either mother or father could be the better parent, social science research confirmed that the best parent is both parents. Ten years ago, it was

considered impolite to suggest that two-parent families were functionally superior to single-parent families. Today, the notions that twoparent families are unimportant and that government can provide an effective substitute

2 For example, the American Psychological Association adopted the following resolution at its 1977 meeting:

Be it resolved that the Council of Representatives recognizes officially and makes suitable promulgation of the fact that it is scientifically and psychologically baseless, as well as a violation of human rights, to discriminate against men because of their sex in assignment of children's custody, in adoption, in the staffing of child-care services, and personnel practices providing for parental leave in relation to childbirth and emergencies involving children and in similar laws and procedures.

have been repudiated. In their place is a broad political and scientific consensus that children need two parents.

In 1965, Patrick Moynihan was condemned for his observation of the consequences of family breakdown:

From the wild Irish slums of the 19th century eastern seaboard, to the riot-torn suburbs of Los Angeles, there is one unmistakable lesson in American history: A community that allows a large number of young men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any rational expectations about the future - that community asks for and gets chaos.

Today, Moynihan's heresy reflects the consensus. The view from the left by groups like the Progressive Policy Institute is that:

Traditional liberals' unwillingness to acknowledge that twoparents families are the most effective units for raising children has led them into a series of policy cul-de-sacs .... Our point is that at the level of statistical aggregates and society-wide phenomena, significant differences do emerge between oneparent and two-parent families, differences that can and should shape our understanding of social policy.

The view from the right by groups like the American Legislative Exchange Council is that:

With a unanimity of view that is virtually unparalleled, social science researchers have documented the fact that children of divorce or unwed birth fair poorly in comparison to children from intact families. Regardless of the social problem which is under consideration, whether it be drug abuse, juvenile delinquency, teenage pregnancy, low self-esteem, poor academic achievement, or even suicide, research points to family breakdown as a primary cause.

In accordance with the resurrected understanding that two-parent families are important for children, liberals and conservatives have reached common ground on the importance of encouraging family formation and family preservation. But what about children of divorce?

IV. How to Encourage The Two-Parent Family. Especially After Divorce

Courts are most accustomed to adversarial presentations that are resolved by the selection of a winner and a loser. The system works well in commercial disputes. The court picks a winner and a loser, the loser is ordered to pay the winner, then we move on to the next case. The difference in domestic relations cases is that it is immoral and destructive to treat children as prizes to be awarded to a winner and denied to a loser.

Children are born with two parents. Children want, love, and need two parents. The fact that mother and father no longer live under the same roof does nothing to diminish the child's need for both parents. The only thing that is assured by a winner

3 Putting Children First: A Progressive Family Policy for the 1990's, Progressive PolicyInstitute, September 27, 1990.

4 Children, Family, Neighborhood, Community: An Empowerment Agenda, American Legislative Exchange Council, 1991.

take-all domestic relations system is that the child will necessarily lose because the child walked into court with two parents and walks out with only one.

In most marriages, both spouses are good parents who love and wish to be an active part of their children's lives. Policies should be based upon the norm of human response rather than upon the pathological extremes. The winner-take-all approach to custody encourages a bifurcation into good parent and bad parent categories. The bad parent is then more easily relegated to a marginal role in the child's life. All losers, all bad parents, are then more easily painted with the same brush of a "standard visitation schedule" encompassing alternate weekends and scattered holidays. All losers, ranging from those who were almost winners to those who barely avoided termination of parental rights, are thus lumped together by the presumption of pathology. Abolition of the presumption of pathology is the first step towards protection of the child's best interests.

Disneyland Daddies, Marginal Mommies, and their non-custodial children have a common complaint; visitation" just doesn't feel like a real parent-child relationship. Parent to child teaching occurs in the quiet moments, the shared tasks, the talks at the end of the day. School-night sleepovers are every bit as important as Saturday extravaganzas, especially for older children who see weekends as a time of conflict between the attractions of parents and peers.

V. Stereotypes Damage Children

Stereotypes about fathers seeking custody to avoid child support and mothers grasping children as meal tickets do not help to resolve custody disputes. Both stereotypes ignore the simple human fact that parents love their children and want to be with them. Stereotypes have become so ingrained that the United States Department of Health and Human Services was actually surprised to learn that young fathers care about their children.5 Maintaining the stereotype that fathers do not care about their children also requires a very special compartmentalization of the mind. Fathers' devotion to and sacrifice on behalf of their children is so naturally expected that it is hardly noticed. The coal miner who continues to work while dying of black lung disease may look like "The Patriarchy" to some but is just a devoted father as far as I can see. In the popular movie, "The Little Mermaid," no one is surprised that King Triton sacrifices everything to save his daughter yet, upon divorce, we would expect him to quietly walk away.

Stereotypes about men create the Catch-22 that fathers don't care enough to seek custody and, if they really cared, they would not put the children through the trauma of a court battle. Stereotypes about women and perceptions of gender bias favoring mother custody in the courts create pressure for mothers to seek sole custody even when they

5 The Changing Face of Child Support Enforcement: Incentives to Work with Young Parents, United States Department of Health & Human Services, Office of Child Support Enforcement, December 1990, page xix. The bureaucracy is not alone in its surprise:

When I first started researching this book, I was **prepared to** rediscover the old saw that conventional femininity is nurturing and passive and that masculinity is self-serving, egotisticaL and uncaring. But I did not find this. One of my findings here is that manhood ideologies always include a criterion of selfless generosity, even to the point of sacrifice. Again and again we find that "real" men are those who give more than they take; they serve others. Real men are generous, even to a fault.... Manhood is therefore a nurturing concept, if we define that term as giving, subventing, or other directed.

Manhood in the Making Cultural Concepts of Masculinity, David D. Gilmore, Yale University Press, 1990, page 229. In August 1990, a Los Angeles Times survey reported that 39 percent of fathers would quit their jobs to stay home with their children if that option were available to them.

recognize that it is not in the child's best interests. Organizations like Mothers Without Custody report that one of the greatest problems encountered by the more than one million non-custodial mothers in the United States is the ostracism they suffer after being pressed to explain why they do not have sole custody. Stereotypes of men and women damage children by indiscriminately ascribing fixed characteristics to large groups of individual human beings. Surely there are some fathers who are uncaring deadbeats and some mothers who are uncaring gold diggers.6 Each child, however, has one specific father and one specific mother, not a caricature from a class.

VI. No Substitutes, Please

Since we know that children of divorce fare poorly in comparison to children from intact marriages, the defenders of the winner-take-all system have developed something of a cottage industry in seeking out factors other than parent loss to explain the deficit. The most commonly asserted rationale is poverty. Single-parent custody would be just fine, we are told, if only we would increase the government subsidies and the income transfers from non-custodians. If increased income is the salvation, we should expect children in stepfamilies to be doing quite nicely since such families have two adults plus an income transfer from the non-custodian, resulting in an economic level at or above that of intact two-parent families. Instead, children in step-families show every bit as many problems as children in single-parent homes. See National Commission on Children, "Speaking of Kids: A National Survey," 1991; Zill, Child Trends.

Many children have grown up economically impoverished and thrived as adults. The emotional and psychological impoverishment that comes from parent loss is far harder to overcome. As stated by Professor Lawrence Meade of New York University:

The inequalities that stem from the work place are now trivial in comparison to those stemming from family structure. What matters for success is not whether your father was rich or poor but whether you had a father at all.

Parent loss through family breakup is a disaster for children. The legal system through which divorcing families must travel can be structured to have positive or negative effects on parent-child bonds. The task is to identify and encourage structures which preserve and enhance the child's bond with both parents.

VII. The Origin of Child Support Policy

Public involvement in child support has grown to such a large scale that it is sometimes forgotten that the entire concept of child support transfer payments is a recent invention. Historically, a parent's duty was to support the child in the parent's own home and to keep the door open for the child to enter. Transfer payments arose only in the highly uncommon situation of a parent who had rejected his or her own child and thereby created a burden for the state or third parties. Child support transfer payments were thus rare during the era of father custody and

remained rare during the early years of the mother custody era. As the pendulum of prejudice shifted to sole mother custody during a time in which women generally did not work outside the home, the courts began to recognize the consequences of placing children in the least economically viable fragment of the former family. The 1920's then saw a large scale transformation in the fundamental structure of child support.

6 Lest I be accused of my own sexual stereotyping, note that the roles are sometimes reversed. When mothers are ordered to pay child support, their compliance rate is lower than that of fathers. See, e.g., 1991 Statistics of Child Support Compliance, Office of Child Support Recovery, State of Georgia; Daniel R. Meyer and Steven Garasky, Custodial Fathers: Myths, Realities and Child Support Policy, Technical Analysis Paper No. 42, Office of Human Services Policy, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, July 1991.

Under the new formulation, the parent who "lost" custody was both deprived of the companionship of the child and ordered to pay the other parent for services that the "loser" had historically provided with love and without charge in his own home. This unique separation of the rights of custody and the duties of support became a consequence of the "tender years" doctrine that is matched nowhere else in a legal system that has prided itself upon its attention to the principle that the possessor of rights should also bear the burdens and responsibilities associated with those rights. It is this bifurcation of rights and responsibilities that is at the root of the problem of civil disobedience in child support enforcement. Current policy makes the simplistic assumption that all non-custodians are "runaway parents" when, in fact, many non-custodians are "thrown away parents" who are victims of a court order that assumed children needed only "a custodian and a check".

What has been left out of the equation is our understanding of human nature and, particularly, our understanding that parents support children because of their relationships with those children. We do not have a problem with large numbers of parents who refuse to provide for their children during an intact marriage yet those same responsible parents become "deadbeats" upon divorce. It is time to examine the role of Government policy in the post-divorce behavior of the non-custodial parents. When we say to non-custodial parents that we care nothing about their relationships with their children, that we will offer no protection against the custodial parent's interference with that relationship, and that we will devote Government resources only to extracting financial payments from them, we should not be surprised by the result. Parents support children when they are permitted to be parents; slaves run awaY.

VIII. False Images And the Formulation Of Public Policy

The most widely cited statistics on child support compliance are those compiled by the United States Bureau of the Census. These figures purport to show that approximately 50% of child support orders are paid in full, approximately 25% are paid in part, and approximately 25% are unpaid. These figures are given as the principal justification for the punitive child support measures undertaken by the federal and state governments during the last decade. The problem is that the cited figures do not accurately reflect the reality of child support compliance and, as noted by Professor Sanford Braver, the methodology adopted by the Census Bureau was completely unreliable. The Census Bureau asked only the custodial mothers whether payment had been received. It did not compare those responses with non-custodial reports of how much was paid or court records of how much was owed. Another flaw was the failure to quantify or correct the underreporting of the amount of child support actually received by surveyed welfare recipients who feared a risk of benefit reduction or termination if they disclosed the receipt of more than $50 in child support. In other contexts, the Department of Health and Human Services has admitted that welfare recipients typically understate their income in Federal surveys.8 Finally, the survey lumped together as "partial compliance" all situations where the delinquency was as little as the late payment of a single installment and counted as "non-compliance" even those cases where the obligor was unemployed, disabled, imprisoned or dead!

Whenever the exaggerations of the child support lobby are exposed, the ready response is that critics must surely admit that at least some child support is not paid. True enough, but this response invariably begs the question of why some child support payments are not paid. I recently met with senior officials of the Office of Child Support Enforcement of the United States Department of Health and Human Services to request data on why child support payments are not made. I learned that very little data exists and that none of it is publicized. The United States spends approximately $1 billion on child support

7 See Non-Custodial Parent's Report of Child Support Payments, Sanford L Braver, Pamela J. Fitzpatrick, and R. Curtis Bay, 40 Family Relations, 180-185, April 1991.

8 Statement of JoAnne Barnhart, Assistant Secretary for Family Support, Before the Subcommittee on Social Security, and Family Policy, Committee on Finance, United States Senate, March 4, 1991.

enforcement yet the United States Congress has no data on how many of the non-paying obligors are unemployed, disabled, supporting second families, or engaged in civil disobedience because they have been unable to see their children.

The enforcement of child support is already the most onerous form of debt collection practiced in the United States. Tax returns are intercepted, credit reporting services are notified, billion dollar bureaucracies are fed, and obligors are even jailed. If compliance is still inadequate despite the efforts of this massive enforcement apparatus, society must begin looking at the question of "why?".

At one point, the Federal Government did begin a survey to learn more about the obligors. Called "the Survey of Absent Parents" (SOAP), the survey was conducted on a pilot basis in two states. The results from that pilot survey undercut the stereotypes and the institutional desires of the Office of Child Support Enforcement. Wayne Stanton, who was then the Administrator of the Family Support Administration and head of the child support enforcement effort, killed the study and refused even to publish the pilot results. Only through the Freedom of lnformation Act has it been possible to obtain a copy of the pilot study and the internal agency paper trail documenting the termination of this important research effort. As stated by Robert B. Helms, then Assistant Secretary for Planning and Evaluation. in a memorandum to Mr. Stanton dated October 1. 1986:

In response to your disappointing memorandum of August 22nd, I have requested my staff to notify the National Opinion Research Center and the Urban Institute that funding for the Survey Of Absent Parents will terminate December 31, 1986, the end of the contract period for the pilot study. While I disagree with your decision, the study cannot be continued without financial support from the program offices which would benefit most from the new information generated by the study.

I would like to point out however, that as our staffs have discussed new AFDC and child support initiatives that the administration might undertake, all were in agreement that much of the information necessary to develop the necessary impact estimates is currently nowhere available....

I remain concerned that the commitment to fund the national survey was not undertaken in good faith by the Office of Child Support Enforcement when the memorandum of understanding was signed.... Obviously the survey has direct and immediate policy relevance, not only for the types of information needs cited above, but also because the survey collects new information about one of the major concerns the Congress was unable to address to the 1984 Child Support Amendments - the "intricately intertwined" issues of custody, visitation rights and child support. [Emphasis added.]

Since the assassination of the Survey of Absent Parents, no serious effort has been undertaken to test the stereotypes, prejudices, and anecdotes that have driven child support policy in the past decade. Only a few tantalizing glimpses of the truth have emerged. For example, in

January, 1992, the General Accounting Office issued a report on interstate child support at the request of Senator Bill Bradley and Representative Marge Roukema and Representative Barbara Kennelly. In part because of the termination of the Survey of Absent Parents, the General Accounting Office reported that the only available database was the survey of custodial mothers undertaken by the Bureau of the Census. The methodological deficiencies of the Census Bureau data have been discussed above, but one finding of the GAO study truly stands out. In both intrastate cases and interstate cases, 66%

of the custodial mothers with child support orders reported that the reason for not receiving payment was "father unable to pay."9

Even without hearing the obligor's side of the story, then we know that at least two-thirds of the problem of child support non-compliance is the result of court orders that fail to reflect the obligor's ability to pay. This committee should not give any consideration to the enactment of additional enforcement mechanisms until it has first studied and alleviated the unfairness of the orders that will be enforced. The lack of data about non-custodians and the facile assumption that all non-payment is simply the result of bad behavior has led to the demonization of non-custodial parents. The stereotype of the "deadbeat" has become so strong that the Department of Health and Human Services was actually surprised to learn that non-custodial parents do care about their children:

Research to date has produced a new and significant insight about the fathers of children born to teenagers. They typically are motivated to support their families, even when they are not married to their partners, and even though they earn disproportionately little and suffer from high unemployment.

This finding contradicts the widely held notion that young fathers are able but unwilling to support their children.

The Changing Face of Child Support Enforcement: Incentives to Work With Young Parents, Department of Health and Human Services, December 1990, page -x. I have no doubt that this HHS report, the research of Professor Sanford Braver cited above, and other research refuting the demonization of non-custodial parents has generally not been brought to the attention of this Committee by the bureaucracy or its special-interest group supporters.

The popular stereotype of the "deadbeat" is the guy in the Mercedes who abandoned his children. The reality is that most delinquent obligors are economically marginal. A look at Virginia's "Most Wanted" list of "big-time evaders" is illustrative:

Frankie L Adams: Mr. Adams is out of jail and making payments; however, he is unemployed.

Robert Montcastle Flannery: . . . The judge ordered a wage withholding for $100 a month on Mr. Flannery's SSA benefits. The first $100 payment was received in August.

Ferman LaMont Payton: Mr. Payton was located in Dublin, Virginia after making application to receive food stamps.

Theodore Rogers, Sr.: Located on the Department of Social Services computerized client information system as a former food stamp recipient.

The Support Report, Virginia Department of Social Services, Division of Child Support Services, October 1991.

9 Interstate Child Support: Mothers Report Receiving Less Support From Out-Of-State Fathers, January 1992 General Accounting Office, GAO/HRD/92-39FS, at page 19.

The demonization of non-custodial parents is used to justify all manner of inhumane treatment. This Committee has already heard from Sylvia FoLk, a non-custodial mother who was incarcerated for 72 days for non-payment. The judge candidly acknowledged from the bench his knowledge that she lacked the money to pay but vowed to and did hold her until the ransom was paid by her church. This inhumane treatment of American citizens is nothing less than a reversion to medieval kidnapping for ransom. Professor David Chambers of the University of Michigan Law School has found that, on average, "deadbeats" are incarcerated in Detroit for 90 days before the stereotype wears thin and the judge realizes that they really can't pay. By then, of course, they have lost their jobs, their cars, their apartments and their relationship with their children. The demonization of non-custodial parents has permitted us to ignore the Constitutional prohibition against debtors prison by engaging in the fiction that the jailing is for the miscreant's contempt in failing to obey the Court's order rather than for failing to pay a debt.

The United States Department of Health and Human Services is the leading force in developing new enforcement techniques. In a 1991 issue of its monthly "Child Support Report", for example, HHS recommended the technique of herding up noncustodial parents and caning them off to jail, threatening to leave them there unless they immediately charged their support arrearages onto credit cards. HHS saw no hint of the immorality of driving citizens into debt or ruining their credit ratings to obtain payments of amounts that were supposed to reflect only a fair assessment of their current ability to pay. In an unintended bit of gallows humor, however, the HHS report revealed that the new technique had little achieved marginal impact because most of the unfortunates had already been bled dry:

A survey later revealed that the majority of obligors most of them with non-AFDC families - had neither charge cards or checking accounts.

Child Support Report, United States Department of Health and Human Services, 1991, at page 6.

Recommendations for Action

1. HHS should be required to assure that non-custodians and their advocates are adequately represented in the policy process. The importance of noncustodians as human beings and as parents is sometimes lost in the closed world of the child support enforcement bureaucracy. Each issue of the HHS Child Support Report lists a dozen or more child support enforcement conferences at which the presence of even a single non-custodial parent would be accidental. This insularity dehumanizes obligors as a class to be acted upon rather than as parents with whom we should communicate and cooperate. Every conference, meeting, or policy making session which is supported by direct or indirect federal funding should be required to include non-custodial parents and their advocates in equal proportion to the representation of custodial parents and enforcement officials.

2. Implement programs recognizing that child support enforcement is more than the mere invention of new coercions. Downward adjustment of an

unfair order is enforcement; job training is enforcement; mediation of access disputes is enforcement; encouraging family formation is enforcement; marriage counseling is enforcement; reducing the need for income transfer and the sense of estrangement after divorce through the use of shared parenting after divorce is enforcement.

3. Enforce the principle that the bureaucracy must represent all of the citizens. Federal law requires state enforcement agencies to process downward support modifications as well as upward modifications. A number of states refuse to obey this requirement because Federal regulations only provide

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reimbursement incentives for "more is better" collection efforts and no state offers equal access to services for custodial and non-custodial parents.

4. Require the Department of Health and Human Services to complete the 1984 Congressional mandate to study and report on the "intricately intertwined" issues of custody, visitation and child support.

5. Give non-custodial parents the same access to federal services as custodial parents. For example, the Federal Parent Locator Service is currently unavailable to non-custodial parents even when the child's whereabouts have been concealed by the custodian and enforcement of child support continues through government agencies.

6. Authorize research into the gender bias in court determinations of custody and support orders.

7. Authorize research into the marginal costs of rearing children for purposes of providing assistance in the development of child support guidelines.

8. Authorize research to further measure the effect of joint custody and shared parenting upon child support compliance.

9. Authorize and fund permanent programs like those recently demonstrated under federal grants to encourage non-litigated resolution of access and support disputes through mediation, counseling- and other conciliation services.

10. Mandate accountability for the expenditure of child support funds received by the custodian as is currently done for Social Security benefits received on behalf of a child.

IX. Conclusion

For the past decade, child support policy at the federal and state level has been driven by the simplistic doctrine that "more is better." More dollars per month, more coercive enforcement, more is better. My position is that "fair is better." When law-abiding citizens, who gladly support their children during the marriage, become outlaws after going through the divorce process, it is appropriate to question whether the system rather than the people should bear the blame.

How many obligors are simply unable to meet the burden that has been imposed upon them by a chivalrous, high-income judge? How many of the "deadbeats" are unemployed, underemployed, disabled, imprisoned, or supporting two families to the best of their ability? How many are engaged in civil disobedience because they have been denied the opportunity to be real parents or even to have access to their children? Why has the Department of Health and Human Services, with all its billions of dollars, failed to carry out the 1984 Congressional mandate to study the "intricately intertwined" issues of custody, visitation and child suppon? Why did Wayne Stanton kill the Survey of Absent Parents? Why did the Department of Health and Human Services selectively report

from the Census Bureau data and omit the fact that mothers themselves explain two-thirds of the noncompliance as "inability to pay? Why has the Department of Health and Human Services absorbed the negative stereotypes so fully that it was surprised to learn that non-custodial parents do care about their children?

Over the years, Congress has developed an ability to discern the self-interest, self-aggrandizement, and instinct for self-perpetuation that afflicts the military-industrial complex and other bureaucracy/special-interest group alignments. The time has come to apply the same wisdom to the child suppon industry. There is no basis for further enforcement initiatives by the Congress until the distortions of past stereotypes and the concealment of data have been corrected.

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MINORITY (DISSENTING) REPORT OF THE
U. S. COMMISSION ON INTERSTATE CHILD SUPPORT
By: Don A. Chavez, MSW, L.I.S.W.

EXECUTIVE SUMMARY

There are three false assumptions upon which a decade of bureaucratic expansionism in child support enforcement has been based. The first and foremost is that nonpayment of court ordered child support is a substantial or primary cause of poverty among children. The second is that financial child support is willingly being underpaid by irresponsible noncustodial parents, and the third is that the primary and exclusive role of noncustodial parents is to provide financial resources to the custodial parent.

Nonpayment of court ordered child support is not the primary cause of child poverty in America. The largest single cause for inadequate parental support by fathers is that no support order is ever entered. Enforcement measures, no matter how effective, cannot impact such cases.

The Majority Report can be summarized as recommendations to force the noncustodial parent to defend a financial child support proceeding in a forum convenient to the custodial parent, additional (draconian) laws to increase sanctions for failure to comply with child support orders, and an increased bureaucracy. As members of child support enforcement agencies, the commission could only be expected to view the solution as a need for an increased bureaucracy.

The relationship between custody and child support compliance is very enlightening. Of fathers with joint custody, 90.2% were acknowledged by their ex-wife to pay their child support on time and in full. Of fathers with visitation rights, 79.1% were acknowledged to pay their child support on time and in full.

Two authoritative reports, The Survey of Absent Parents and concluded in part:

1. Amounts Reported: "Noncustodial fathers report paying a larger amount of child support than is being claimed by custodial mothers. If the fathers' reports are correct, it is possible that the child support payments are being systematically underestimated in the major data bases, because they rely solely on the reports of custodial mothers." [SOAP pg ix] Fathers reported paying 10% to 40% more child support than the mothers said they paid. [SOAP pg. iv]

2. Parental Access: Joint custody was associated with higher payment levels. ". . . payment was higher and compliance was

higher." [SOAP pg. viii]. "Weekly contact between noncustodial parents and their children were positively associated with payment levels and compliance levels." "These findings indicate that efforts to keep noncustodial parents involved with their children and to decrease hostility between parents may increase payment and compliance levels." (emphasis added) [SOAP pg.

Thus, whether or not the noncustodial parent has been unemployed at all in the previous year is the strongest predictor of payment as yet identified.

INTRODUCTION This Commission has been asked by the Congress of the United States of America to provide its citizens with recommendations to address one of the most perplexing realities of our modern society, the difficulties faced by children of divorce whose parents reside in different states. The Commission was given a unique opportunity to evaluate and provide new insight into the devastation and trauma faced by a generation of this nation's children.[1] Extensive analysis and testimony was generated by and presented to the Commission through many professionals and advocates, as the Commission met over the last twenty months at locations across the Country. The ultimate question Congress must now answer is whether the recommendations contained in the majority report of the Commission will serve to the benefit or detriment of the innocent children whose lives have forever been torn apart by their parents' divorce.

The strength of the emotional bonds within the family is the single most critical determinant for launching positive and well adjusted children into adulthood, regardless of whether the family is intact or separated. Government and societal forces to exclude or drive fathers out of the lives of their children is manifesting itself in catastrophic proportions in every facet of American life, including loss of emotional and financial child support.

For over a decade now, divorced and other single fathers have served as political scapegoats for a range of social ills, most notably poverty. From the roots of the politics of division and gender bias and encouraged by special interest groups, the most expensive child support enforcement experiment in the history of America has arisen. However, this Commission continues to advise expansion of criminal sanctions and massive additional funding. This Report recommends that Congress refocus scarce funds as well as its attention, on more sincere proposals to address the applicable social problems.

Careful study of child poverty in single parent households with valid child support orders, shows poverty in these households to be in relative proportion to the poverty rate of the entire United States population. Nonpayment of court ordered child support is not the primary cause of child poverty in America. Instead, poverty prevents financial child support compliance. The largest single cause for inadequate parental support by fathers is that no support order is ever entered. The Bureau of the Census report issued by the U. S. Department of Commerce on Child Support

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[1] The percentage of children living in households with only one adult tripled from 1960 to 1988, Fuchs, Victor R. and Diane M. Reklis, America's Children: Economic Perspectives and Policy Options, Science Vol 255, p 43.

and Alimony: 1989 issued September, 1991 reported that only 57.7 percent of women with children included in the Census were awarded financial child support. The data presented is misleading for enforcement purposes, since it included children whose fathers were deceased and adult children under age 21 for whom the support order no longer applied. However, it also noted that only 23.9% of never married women were awarded child support. Enforcement measures, no matter how effective, cannot impact such cases. (See Exhibit A)

One of the driving forces behind strengthening of child support enforcement are misunderstood studies such as those by Garfinkel and Ollerich (1983).[4] They postulated that divorce reform could reduce the "poverty gap" -- the difference between the incomes of poor families headed by single mothers and the amount of money they would need to move above the poverty level -- by 27 percent. In arriving at this estimate, it was assumed that all

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[4]Garfinkel, Irwin, and Donald Ollerich, 1983, Distributional Impact of Alternative Child Support Systems, Policy Studies Journal, Vol. 12, No. 1, September, 1983, pp 119-129. Similarly, an OCSE 1985 report by Ronald Haskins, *et al* Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families, Final Report, Grant # 18-P-00259-4-01, Office of Child Support Enforcement, April 1, 1985, made a crude estimate based on simplistic average income data and selection of two states' excessive child support formulas, that child support awards could be increased between $10 Billion and $26.6 Billion nationwide. He assumed that all noncustodial fathers were deserters responsible for the increase in AFDC spending and ignored the expenses incurred by involved fathers who would be financially foreclosed from involved parenting, that the AFDC problem primarily results from never married mothers with no support orders and that most financially able fathers support their children. Haskins' errors were compounded by Williams, Robert G., 1987, Development of Guidelines For Child Support Orders: Final Report, U. S. Department of Health and Human Services, Office of Child Support Enforcement, March, 1987 which presented the difference between Haskins' hypothetical maximum and the amount of existing awards as an "adequacy gap" in awards, rather than acknowledging the simplistic assumptions used to maximize the "potential" collections in Haskins' report. The resulting confusion, when states were unable to close a gap actually caused by never married mothers with no support order, led several states to increase awards to middle and upper income mothers or to eliminate the reduced support awards for shared or joint custody. Such actions, albeit made in the name of reducing poverty, did nothing to aid the AFDC problem. For an excellent analysis of these issues, see the proceedings paper of Roger Gay, M. S., A Brief History of Prevailing Child Support Doctrine, Proceedings of the Sixth Annual Conference of The National Council For Children's Rights, March 19-22, 1992, Arlington, VA, pp 24-27.

eligible custodial parents would have a valid child support order, and all noncustodial parents would be fully employed. If these two conditions were achieved, a significant reduction in AFDC expense would result. But neither goal demands expansion of enforcement efforts in cases where valid support orders exist.

Most noncustodial parents of AFDC children do not earn enough to pay as much child support as their children are already receiving in AFDC benefits. Enforcement measures will not cure unemployment. The waste from experimental programs has already run into billions of dollars. The federal deficit for child support enforcement for the last two years has been over a half billion dollars per year.

Child support reforms of the 1980's have actually contributed to a deterioration of the statistical record on child support payment. Worse yet, the policies serve to drive fathers away from their children, an effect of government policy that continues to be a major concern. The Family Support Act provisions on child support awards, as implemented by the U. S. Office of Child Support Enforcement, stripped noncustodial parents of funds necessary to support children during periods of parental access (visitation).

At the same time, they have put payment of all that is awarded further out of the reach of many parents.

The Majority Report of the Commission can be summarized as recommendations to force the noncustodial parent to defend a financial child support proceeding in a forum most convenient to the custodial parent or the child support agency, for measures to anticipate and prevent noncompliance, additional (draconian) laws to increase sanctions for failure to comply with child support orders, and an increased bureaucracy to administer the recommended programs. As members of agencies devoted to financial child support enforcement, they could only be expected to view the solution myopically as a need for an increased bureaucracy devoted to the agendas on which their own agencies are based. This report does not intend to suggest that the members of the Commission failed to attempt to responsibly carry out the mission they were given by Congress. The Commission simply lacked adequate diversity for any other view to prevail.

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[3] See e.g. Anderson-Khleif, Susan, Divorced But Not Disastrous: How to Improve The Ties Between Single Parent Mothers, Divorced Fathers, and the Children, Prentice-Hall, 1982. Often fathers cannot pay their support, cannot afford activities with the children... If the divorced father...is ordered to pay an amount of support that makes it impossible to meet his own living expenses and pay for visitation activities--he probably will not see much of his children." pp 148-150.

The ultimate question to be asked in evaluating the recommendations made by this Commission is deceptively easy to state, but extremely difficult to answer. The recommendations should not be evaluated merely as to their impact on the federal budget deficit, their impact on any governmental agency, nor indeed, their impact on any public interest group. Instead, ask how each provision will effect the needs and concerns of each child in this country who is caught in the middle of his or her parents' divorce. This presentation will address the need of children of divorce with extensive reliance on the data revealed September, 1991, on Child Support and Alimony by the Bureau of Census, the 1988 Survey of Absent Parents conducted by the U. S. Department of Health and Human Services and Professor Sanford Braver's research criticizing the bias in the Census findings.

The challenge now facing Congress is to legislate protection which will best enclose and protect children of divorce in their world which is now split between two households. Few members of Congress personally experienced the anguish of their parents' divorce and never wet a pillow at night fearful of never seeing one of their parents again. Do the recommendations reflect new insight into the causes for inadequate compliance with child support obligations and provide new hope for Johnnie and Susie's future? This Report asks Congress: "Is there not a way to encourage responsible parenting other than by fashioning new and bigger sticks? Where is the concern for the child's relationship with the noncustodial parent other than as a hook for obtaining transfer payments between the parents?"

To a nation that views children as its most precious resource, the specter of a parent callously and selfishly abandoning all parental responsibilities, including financial child support obligations, understandably evokes moral condemnation. Everyone agrees that children should be supported. The question is whether the Courts are structuring fair financial child support arrangements. Unless custody, parental access (visitation) and support amounts are fairly established, there is no moral authority for enforcement. Surprisingly, a parent who fails to provide the much more important child support, **EMOTIONAL CHILD SUPPORT**, or who blocks such child support by limiting parental access, evokes no such moral outrage.

The American dream of "a clapboard house surrounded by a picket fence...children playing in the yard and parents alternately observing lovingly from the porch or joining in the fray..." has turned into a nightmare. The nuclear family has been replaced by single parent households, with one parent relegated to the role of an occasional visitor by judicial fiat, and by teenage mothers whose children never know their father. On a broader scale, our

inner cities are demographically recognizable by many single statistics, including crime, substance abuse, teenage pregnancy rates and poverty. Ironically, the nation seems determined to ignore (or attempt to explain away) the statistical correlation between such enormous social problems and single parent households, even though the correlation coefficient is extremely high across all social and demographic groups. As graphically illustrated in the attached Exhibit C from the U. S. Department of Health and Human Services, National Center for Health Statistics, the increased psychological problems of children of divorce are readily demonstrated and the involvement of a stepparent does little if anything to resolve such problems.[4]

Congress is asked to carefully reevaluate the recommendations of the Majority Report in light of the revelations of the Bureau of The Census report on Child Support and Alimony. For the very first time in history, the U. S. Census Bureau looked into the possible causes for noncompliance. The report found a dramatic increase in the number of households without men - up 39% between 1979 and 1989. There are now 10 million households with 16 million children living without fathers. The real villain is not divorce. In 1990, nearly 3 million (2,950,000) of the women were never married to the father of the child. That figure represents approximately 30% of the families with an "absent" father. The largest single factor accounting for the increase in AFDC rolls has been the increase in the number of families in which the parents were never married. Only 24% of the never-married women said they received their entire child support while 72% of married, separated and divorced women acknowledged receiving their entire child support. How can any effective program to encourage (or even coerce) compliance, fail to differentiate between such extremely different situations? A father who first learns he is a parent when served with a paternity proceeding initiated as a result of AFDC payments needs dramatically different governmental assistance than a loving father who struggles against the societal and judicial bias until successfully obtaining an equal parental role after a divorce from a long term marriage. The Census Bureau combined compliance data reported by AFDC mothers with other compliance reports even though they have no direct knowledge of the amount collected and retained by the government. The Survey of Absent Parents (identified below) demonstrates that a much larger variance in reporting by custodial and noncustodial parents applies when AFDC is involved.

Even more revealing to the issues of concern to this

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[4]Children in step-families show every bit as many problems as children in single-parent homes. See National Commission on Children, "Speaking of Kids: A National Survey," 1991; Zill, Child Trends. Thus, the concept that increased financial assistance will alleviate the emotional problems of children of divorce is not supported by the data.

Commission was the relationship between compliance and where the children lived. Only 63.7% of children live in the same state as their noncustodial fathers. 25.6% live in a different state and 10.7% live overseas or their whereabouts are unknown. When the children live in the same state, fathers were praised by their ex-wives as paying their child support on time and in full 81.1% of the time. When the children live in another state, payment by fathers is acknowledged to be in compliance for 65.6% of cases. When the children live overseas or their whereabouts are unknown, mothers reported full compliance of only 46.6%. (See Exhibit D)

The relationship between custody and child support compliance is very enlightening. Of fathers with joint custody, 90.2% were acknowledged by their ex-wife to pay their child support on time and in full. Of fathers with visitation rights, 79.1% were acknowledged to pay their child support on time and in full.[5] Yet only 55% of fathers have visitation and only 7% have joint custody. Can Congress fail to recognize that parents support children out of their love for them and that the best weapon to combat inadequate financial child support compliance by employed parents is to allow both parents a parental role in their children's lives? Sadly for Johnnie and Susie, 37.9% of fathers had neither custody nor visitation rights in 1990. But fathers with neither custody nor visitation rights paid their child support on time and in full in 44.5% of all cases. Instead of "absent parents or deadbeat dads", shouldn't the media, this Commission AND CONGRESS, through its legislation, be praising and supporting those "aborted" fathers as martyrs and commending these 45% as responsible heroes?

The Survey of Absent Parents ("SOAP") conducted by the U. S. Department of Health and Human Services ("HHS") set out to:

a. Determine the factors which influence the establishment and

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[5]For additional studies showing a correlation between parental access and financial support compliance, see e.g. D. L. Chambers, Making Fathers Pay: The Enforcement of Child Support, (1979); J. S. Wallerstein & D. S. Huntington, Bread and Roses: Nonfinancial Issues Related to Fathers' Economic Support of Their Children Following Divorce, The Parental Child Support Obligation 135 (1983); Furstenberg, Nord, Peterson & Zill, Life Course of Children of Divorce: Marital Disruption and Parental Contact, 48 Am Soc Rev 656 (1983); S. L. Braver, I. N. Sandler & S. A. Wolchik, Non-Custodial Parents: Parents Without Children (1985) [symposium presentation at annual meeting of American Psychology Association, Los Angeles, CA)]; N. J. Salkind, The Father-Child Postdivorce Relationship and Child Support, The Parent-Child Support Obligation (1983); R. Horowitz & G. Dodson, Child Support, Custody and Visitation: A Report to State Child Support Commissions, Amer Bar Assoc, Nat Legal Resource Center for Child Advocacy and Protection, Child Support Project (July, 1985) pp 22-24.

collection of financial child support; and

b) Provide reliable descriptions of the obligor and obligee population.

Florida and Ohio were chosen for the initial pilot survey, which was reported in 1988 and never released until the National Council for Children's Rights filed a Freedom of Information Act request. Why SOAP was never released by HHS or the recommended follow-up studies conducted is unclear, unless HHS did not like the implications revealed by accurate data. The Report presents exhaustive detail, consisting of more than 54 pages of text plus extensive attachments listing references and an appendix presenting the underlying data. The Report, prepared by Freya L. Sonenstein and Charles Calhoun, with the assistance of numerous individuals and institutions, including the Urban Institute in Washington, DC, and NORC, Social Science Research Center at the University of Chicago, provides dramatic and important insight into the issues being considered by this Congress. The Report concluded in part:

1. Amounts Reported: "Noncustodial fathers report paying a larger amount of child support than is being claimed by custodial mothers. If the fathers' reports are correct, it is possible that the child support payments are being systematically underestimated in the major data bases, because they rely solely on the reports of custodial mothers." [SOAP pg ix] Fathers reported paying 10% to 40% more child support than the mothers said they paid. [SOAP pg. iv]

2. Parental Access: Joint custody was associated with higher payment levels. ". . . payment was higher and compliance was higher." [SOAP pg. viii]. "Weekly contact between noncustodial parents and their children were positively associated with payment levels and compliance levels." "These findings indicate that efforts to keep noncustodial parents involved with their children and to decrease hostility between parents may increase payment and compliance levels." (emphasis added) [SOAP pg. viii]

3. Poverty levels among poorer families ranged from 40% for custodial parents to 15% for noncustodial parents. Child support enforcement records sampled reflected higher poverty. In Ohio 69% of custodial parents were listed as poor, compared to 49% of noncustodial parents. However, with as much as one-half of the payor population in poverty, financial problems clearly impact compliance. [SOAP pg. 21]

4. Methods of dealing with divorce and post-divorce family which encourage cooperation result, in higher compliance and happier, better adjusted children. [SOAP pg. viii]

5. "... analysis revealed that compliance was positively associated with the annual income of the noncustodial parent and the custodial parent (excluding child support transfers), remarriage by the noncustodial parent, joint custody arrangements, weekly contact between the noncustodial parent and child, and residence within one mile of the child." [SOAP pg. vi]

6. "The absence of this information is a major stumbling block for the development of a coherent and informed national child

support policy." (emphasis added) [SOAP pg. ix]

Although parents cannot be forced to love their children, their love can be poisoned by a judicial system that views their relationship with their own children with apathy, at best, and hostility, at worst. Our society generally denies noncustodial parents a parental role after a divorce and fails to enforce the nominal access traditionally granted. Our financial child support enforcement agencies view them merely as anonymous cash donors with no empathy for the hole left in their hearts when their children are amputated from their lives. The pain of loss is not gender specific, as is evidenced by the national support group, Mothers Without Custody.

Another excellent report was published in Family Relations, 1991, 40 180-185 by Professor of Psychology at Arizona State University, Sanford L. Braver. His study, which was funded by a grant from the National Institute of Child Health and Human Development, presents evidence which is so compelling that Congress should insist that no further child support enforcement programs be funded until after adequate reliable data is available. Professor's Braver's study evaluates financial child support compliance based on inquiries to custodial and noncustodial parents and a review of court records. Dr. Braver's findings stand in uncontested contrast to the current view of the noncompliance problem. His report states in salient part:

> "According to the compliance ratio figures, divorced mothers report receiving between two thirds and three quarters of what they are owed. These figures are considerably less alarming than any previous portrayal of the extent of the nonpayment problem.
>
> Second, the picture changes markedly when the (matched and full sampled) fathers are queried....According to them, only 4% pay nothing at all, and they report paying better than 90% of what is owed. According to what they tell us, child support nonpayment is barely a problem at all.
>
> Despite the large mean differences, there was some correspondence between mother's and father's report of their standing relative to other families. A correlation of .85 was found between how much the mother and father say was paid in the last twelve months, and a .60 correlation was found between their respective reports of the percentage of what was owed that was paid. Thus, the father's report of the percent of what was owed that was paid can be predicted very well from the mothers, but a very substantial constant, about 27% must be added....

Predictors of Nonpayment. Table three (attached to this Report as Exhibit (B)) presents some correlates of payment, in

terms of percentage paid (both by custodial parent's and noncustodial parent's report). Custodial parent's race (whites receive more) and custodial parents and noncustodial parent's education are significant correlates. Of more impact are the indexes of ability to pay. These include noncustodial parent's income, how much child support was owed, how much child support per child was owed, and the percent of noncustodial parent's income that was owed. The biggest single factor appears to be employment (assessed by the question: "Since we last interviewed you one year ago, has there been any time that you did not work, excluding vacations and sick time?"): a correlation of .48 was found (for custodial parent's report; .20 for noncustodial parent's report) between the noncustodial parent's unemployment and percent paid. Thus, whether or not the noncustodial parent has been unemployed at all in the previous year is the strongest predictor of payment as yet identified. When attention is restricted to only families where the absent parent was not unemployed at all in the previous 12 months, the payment ratios climb to 80% and 100% for custodial and noncustodial parents' reports, respectively.[1]

Discussion and Policy Implications. Previous research on child support is primarily based on one of two data sources, court data or self-report of custodial mothers. Each of these appear likely to contain mechanisms that would cause them to be biased in the same direction, namely to underestimate the true payments. Accordingly, the present study was designed to explore child support payments in a representative sample in which all three relevant sources, noncustodial parent's reports as well as the two mentioned above, could be matched. It was found that court records could underestimate payment in at least two ways. First, judges could fail to require that Decrees contain the provision ordering support to be paid through the court. This appears to occur in about 20% of the cases. Second, notwithstanding the existence of the provision in the Decree, (since the provision is not enforced) payors might choose to pay payees directly, bypassing the court (respondents report that about 57% of the payments are made directly). Thus, court records appear to be low by at least half. Moreover, custodial parents' report of payments as a

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[1]In reviewing this paragraph, each reader is asked to keep in mind the point which was not even addressed by the article; i.e. where noncustodial parents are unemployed and no adjustment is made in their financial child support obligation (whether from fear of involvement with the divorce industry, financial inability to afford a lawyer or from pride which kept the parent from admitting they needed a reduction) the delinquency in the amount legally owed, grossly exceeds a fair determination of the unemployed parent's financial child support obligation.

percent of what's owed is about 27% lower than their matched noncustodial parents' report.... ."

It is clear from the present findings, and with hindsight is fairly obvious, that asking the two divorced parents the same question should garner different responses. "(Indeed the parental differences reported here have recurred in virtually every topic explored in the interview. For example, other financial issues, the extent of visitation, how involved the noncustodial parent was with the child prior to the divorce, even who performed routine infant care when the child was a baby, are all subject to massive reported differences in the predictable direction: each parent conveying that their own behavior was positive, while their ex's was negative) (citations omitted). It is a mistake to regard either of these reports, by itself as definitive. Instead, it should be recognized that each is likely to be biased, and substantially so, in a self-serving (and "ex-spouse bashing") direction.

Imagine the impact had the earlier studies queried only fathers. According to the present data, policymakers would have "learned" that only a rare minority of 4% fail to pay any child support, that over 90% of what is owed is in fact paid, and that this figure rises to 100% when fathers who experience unemployment are excluded from consideration. These figures hardly paint the portrait of a severe national problem; it is difficult to imagine that costly programs would have been voted to correct this small a "problem"....

Clearly no judge would decide a case after listening to only one of the two sides to a disagreement, but this is just what the Census Bureau researchers and policymakers did, when they believed reports from custodial parents without qualification...". (Emphasis added).

In light of Professor Braver's research, a study of joint custody based on inquires to custodial fathers and adjustments for the excessive obligations imposed during unemployment would be enlightening. Surely the 90.2% compliance acknowledged by ex-wives reported by the Census Report would then reflect a record close to 100% compliance. Clearly, if the direct expenses incurred by such

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[7] See also, Ray Rainville, Presentation: Child Support Technology, 3rd National Court Technology Conference, Dallas, TX, March 11-15, 1992. In a two week review period, established that at least fifty percent (50%) of fathers listed by New Jersey State Courts as delinquent by more than Fifty Thousand Dollars ($50,000), were actually cases in which the child had attained the age of majority, the jurisdiction had changed, or the order had long since been invalid for some other reason; but the orders had never been removed from the court's records.

parents is considered, their payments far exceed the amounts ordered by the court, a benefit for the children which is seldom considered.[8]

The statistical study by Professor Braver is perhaps best documented by the financial child support data in Oakland County, Michigan where the Michigan Friend of the Court annually reports collections exceeding almost all states and which receives numerous awards for its exemplary record of financial child support collection. Oakland County is relatively affluent and does have several innovative programs designed to minimize conflict between divorcing parents. However, the real secret to Oakland County's success lies in the emphasis placed on making sure that all payments are funnelled through the Friend of the Court. In this manner, it is able to report compliance rates of 90% with none of the enforcement measures sought by the Commission and no greater abuse of the civil rights of delinquent fathers than has become the norm in our society. Oakland County's story is this: actual child support compliance far exceeds the rates presently being asserted and where noncompliance exists, it primarily reflects financially desperate situations of the noncustodial parents.

In light of Professor Braver's insight into the Census Report, the media's reporting on "Deadbeat Dads" was extremely irresponsible. Such reports accept that mothers accurately reported the amounts received, failed to note the biased methodology for presentation and the many inadequacies in the data. The media generally accepted as axiomatic that court ordered financial child support is fair, designed to be in the best interest of children and that no excuses for noncompliance are acceptable. No member of the media exhibited the sensitivity to recognize the total desperation and disillusionment in the judicial system by fathers who have abandoned their entire lives, including family, jobs and community. This illustrates the total insensitivity to the emotional nightmare faced by parents on a daily basis across this Country as children they love and adore are torn from their arms and given to the "better" parent with the "lesser" parent left to find solace in parenting through checking account disbursements. No public outcry resulted in the popularization of a term such as "Meal Ticket Mommy" (a parent who appropriates financial child support for his or her benefit rather than applied as <u>partial</u> financial child support which is appropriately augmented by the recipient spouse). Are numerous

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[8]<u>See</u> *e.g.* Anderson-Khleif, Susan, <u>Divorced But Not Disastrous: How to Improve The Ties Between Single Parent Mothers, Divorced Fathers, and the Children</u>, Prentice-Hall, 1982 pp 148-150 ("Divorced fathers who keep in touch with their children ... end up with many of the same expenses that live-in fathers have. They pay for many extras that have nothing to do with their legal child-support obligations...").

fathers in our society such evil and irresponsible parents that they actually refuse to provide financial child support for their children? Alternatively, do such individuals actually reflect an indictment of a system that turns a loving and caring father into a desperate fugitive from justice with no hope and no confidence in a judicial system that views him solely as a pocketbook. Unless greater insight is applied, another generation will be left to discover the real needs of children of divorce, the need for emotional child support which requires an active, involved relationship with both parents, notwithstanding the divorce.

Since financial child support compliance by mothers is significantly worse than for fathers[9], the term "Deadbeat Dads" is as bigoted and as irresponsible as any racial epithet. Perhaps the lower compliance rates of "noncustodial" mothers indicates the primary reason for noncompliance in general, i.e. financial inability to pay and resistance to court-ordered payments when the obligation creates a financial hardship which cannot be justified by the best interest of the children. Our judicial system is extremely sympathetic (at least financially) to mothers without custody (although society often inappropriately stigmatizes such individuals) and seldom requires payment of any financial child support.

Whether the extent of noncompliance with financial child support orders is an indictment of obligors or an indictment of our domestic relations industry is in question, even though such issue does not appear to have been seriously considered by the Commission. The industry is doomed to failure because of its insistence on viewing "noncustodial" parents as objects for bureaucratic manipulation rather than as parents and loving participants in the lives of their children. Where is the realization that parents financially support their children out of love and not because the bureaucracy has the power to imprison them if they fail to honor their role after a divorce as an anonymous cash donor to the "custodial" parent. Fathers face a bureaucracy that ignores the expenses incurred to support their children and views their emotional child support and relationship with their own children with apathy, at best, and hostility, at worst. Where is the concern for the relationship between our nation's divorced

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[9]Meyer, Daniel R. and Steven Garasky, 1991, Custodial Fathers: Myths, Realities and Child Support Policy, p. 22. Office of Income Security Policy, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services. (Fathers studied in Wisconsin were less likely to receive support awards (30%) than mothers (80%), and fathers (47%) were more likely than mothers (27%) to receive no payment of amount awarded). See also, 1991 Statistics of Child Support Compliance, Office of Child Support Recovery, State of Georgia.

children and their fathers. Until we view fathers as parents and treat them with the respect due all human beings, they will view child support collection agencies as the enemy and who can fault their logic? The Commission treats non-custodial parents as if they were cattle and seeks only new ways to increase cash production and improve herding techniques. The recommendations of the Majority Report merely reinforce the notion that noncustodial parents should be anonymous and complacent cash producers.

The natural parental desire to provide financial child support is best indicated by the almost universal experience of delinquent obligors who give their children expensive presents or lavish entertainment when allowed an infrequent "visit", even though facing severe sanctions for delinquent financial child support obligations. Such behavior has been referred to as the "Disneyland Dad Syndrome". Financial child support collection agencies regularly use such behavior to demonstrate ability to pay and completely fail to recognize the desperate desire to support their children when given an opportunity to insure that it will actually benefit the child and sustain the parental relationship, rather than provide financial resources to support the other parent.

The solution to virtually all compliance problems therefore seems obvious:

1) noncustodial parents should be awarded joint custody or extensive parental access;
2) custodial parents should be discouraged from moving the child(ren) away from their other parent;
3) federal programs should be critically reviewed to remove adverse impact on family formation and stability.

Although it is true that a statistical correlation does not establish causation, such blind refusal to evaluate and accept as presumptively valid, the insight provided by the Census Report, is reminiscent of R. J. Reynolds and the tobacco industry's refusal to accept the causal link between cigarette smoking and lung cancer. Thus, JOINT CUSTODY IS THE PERFECT PANACEA for child support compliance problems! This Commission not only refused to accept this logical conclusion, but BY A TIE VOTE, with two abstentions, decided against recommending that Congress establish a successor Commission to study ways to combat the epidemic problems associated with parental access.

The Importance of Fathers in Childhood Development

Stereotypical assumptions about the disinterest of fathers has become so ingrained that the U.S. Department of Health and Human Services was actually surprised to learn that young fathers care about their children:

"Research to date has produced a new and significant insight

about the fathers of children born to teens: They typically are motivated to support their families, even when they are not married to their partners, and even though they earn disproportionately little and suffer from high unemployment".[10]

If Johnnie and Susie's welfare is dependent only on the presence of a nurturing mother and adequate financial resources, the child support compliance objectives of this Commission should ignore any adverse impact of draconian measures on noncustodial fathers. The importance of a father's involvement in his children's lives after a divorce should be evaluated solely on the dramatically improved child support compliance evidenced by data such as the recent Census Report and similar literature. However, if the dysfunction of children in single parent households can properly be attributed to the loss of one parent, the noncustodial parent's involvement in his or her children's lives should be given primary importance. Fortunately, both fathers and mothers play critical roles in child development, so Congress has an opportunity to embrace shared parenting and thereby advance compliance with child support obligations while dramatically aiding the psychological development of this nation's children of divorce.

The benefits to children from the slowly changing role of fathers as they become more involved in parenting[11], and the knowledge members of Congress should obtain before making recommendations on social policy in the family relations arena is presented dramatically in Kyle D. Pruett, M.D.'s book, The Nurturing Father. Dr. Pruett is a renowned child psychiatrist at Yale University. His analysis and case studies on children whose fathers were the primary caretaker during infancy are presented in a manner which is both compelling and captivating. Instead of exhibiting difficulties, the children fared as well as normally expected, and excelled in several significant areas.

Conventional wisdom, in contrast to Dr. Pruett's findings, currently reflects pervasive confusion about the proper roles of fathers after a divorce. Although the American society has accepted the feminist revolution and concepts of equality in the workplace, equal rights and responsibilities for parents are far less accepted. Moreover, many advocates for feminism support a woman's right to choose between the roles of career and

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[10]"The Changing Face of Child Support Enforcement: Incentives to Work With Young Parents," HHS December 1990. See also, Manhood in the Making: Cultural Concepts of Masculinity, Davis D. Gilmour, Yale University Press, 1990, p 229.

[11]In August 1990, a Los Angeles Times survey reported that 39 percent of fathers would quit their jobs to stay home with their children if that option were available to them.

mother/housewife but are unable to contemplate a similar option for men. Men are chastised repeatedly in the press for failing to assume equal responsibility for housework, but even a casual review of parent-child magazines demonstrates that modern American culture views parenting as the exclusive domain of women. Such bias is most evident in custody, visitation and child support. The empirical data inescapably demonstrates pervasive gender bias against the active parental involvement of fathers after divorce. Since much of the sexual discrimination against men is perpetuated by men and because it has become so ingrained in our culture, most people are unaware of its extent and many fail to even recognize its existence. The misfortune of personal experience or the shared experience of a close friend or family member whose life is destroyed by the discrimination institutionalized in the judicial systems of U.S. divorce courts is the primary sensitizing factor providing such insight. Each member of Congress is asked to talk to at least one divorced father and discuss his experience with the divorce industry and keep the discussion in mind when considering the proposed legislation.

Does institutionalized sexual discrimination explain the public's lack of awareness of the gender bias against men? Every divorced father believes his Constitutional rights of due process and equal protection were violated or ignored. Some express the concept as judicial bias, while others merely address their anguish and frustration when they realize that unless they were model citizens and perfect parents and their spouses are proven to be "unfit", they are not going to receive more than nominal visitation. Can all of these people be wrong? If carefully questioned, few divorced women, divorce lawyers or judges would disagree. Feminist groups, which properly attack gender bias in the workplace, are unwilling to eschew the gender bias which creates a feminist advantage in the areas of child support, custody and alimony. The Census even shows that a lower percentage of women with joint custody are below the poverty level.

The divorce courts in our country are structured to serve as a guardian and protector of women and mothers. Their success in making the public aware of this role is perhaps best illustrated by the propensity of men and women to file for a divorce. Approximately seventy-five percent of domestic relations cases are initiated by women.[12] Men are well advised to view divorce as a nightmare worse than the worst marriage could ever be, since he will likely lose any substantive relationship with his children and be "taken to the cleaners" financially. Our newspapers regularly report a father's murder-suicide when faced with divorce, yet no one ever asks what caused such absolute desperation that so many

[12]The Research Department of Texas Children's Rights Coalition advised that published national reports/estimates on the percentage of women who file for divorce range from 74% to 80%.

men perceive such heinous behavior as their only escape.

The pervasive "cookie cutter" approach to custody decisions results in large part from the judicial dislike of divorce proceedings which clog their dockets. Our judges correctly assumed that if the average father thought he had a chance to obtain sole or joint custody, the floodgates of litigation would be opened. Their primary concern for docket control, rather than the best interest of the child, also allows our judiciary to accept the current trend against joint custody based on inadequate supporting evidence on relitigation, over the documented studies which show the many benefits to the child's psychological development and the substantially improved child support compliance.

Judges and lawyers actively discourage litigation by convincing fathers that their chances of sole or joint custody is remote and will be extremely expensive. Accordingly, if fathers are offered more than the traditional alternate weekend and perhaps one evening on alternate weeks, they feel forced to accept the offer for fear the judge will order less, or punish them in the property settlement or alimony provisions of the judgment. Few custodial fathers seek or obtain child support, for the same reason.

Equal Protection

The Federal public policy against sexual discrimination is stated generally in the Fourteenth Amendment, as well as in many important specific areas. Thus, sexual discrimination is barred in education (15 Am Jur 2d, Civil Rights, §§ 84-92), employment (15 Am Jur 2d, Civil Rights, §§154-192), housing (15 Am Jur 2d, Civil Rights, §§477-490), public accommodations (15 Am Jur 2d, Civil Rights, §§29,43), and credit opportunity (Am Jur 2d, New Topic Service, Consumer Credit Protection, §126.5 (Supp)). Moreover, 16A Am Jur Constitutional Law at §769 states that "the trend is to strike down discrimination based on sex in many other areas, such as probate, domestic relations, sports or athletics, benefits under the Social Securities Act, benefits under workmen's (sic) compensation laws, retirement benefits, ..." (emphasis added and citations omitted). The most recent federal legislation regarding sexual harassment is the Civil Rights Act of 1991 which was signed by the President on November 21, 1991. The Act expressly "seeks to expand the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination." Congress found additional remedies under federal law are needed to defer unlawful harassment and intentional discrimination in the workplace." Clearly, the trend noted in Am Jur is continuing.

Classifications based on sex, like classifications based on race, alienage and national origin, are inherently suspect and must therefore be subjected to close judicial scrutiny, under the Equal Protection Clause of the Constitution, *Frontiero v. Richardson*, 411 US 677 (1973). Merely asserting that a statutory scheme dis-

criminates against men does not protect it from such scrutiny, *Orr v. Orr*, 440 US 268 (1979). Hence, to withstand constitutional challenge under the Fourteenth Amendment, classifications involving governmental action must serve important governmental objectives and must be substantially related to achievement of those objectives, *Personnel Admr. of Massachusetts v. Feeney*, 442 US 256 (1979). Accordingly, gender-based classifications in the Massachusetts criminal code proscribing spousal or child non-support were held unconstitutional. For other cases holding state criminal statutes unconstitutional, see e.g. *Cotton v. Municipal Court for San Diego Judicial District*, 130 Cal App 601 (1976) (statute imposing criminal penalties only against fathers); *State v. Fuller*, 377 So 2d 335 (crime for husband but not wife to fail to support destitute spouse). In *Fuller*, supra, the court concluded that there was no reason to use sex as a proxy for need and also rejected the state's assertion that its objective was to rectify past employment discrimination against women which had resulted in their failure to obtain good paying jobs to support themselves.

There can be little doubt that the well established Federal public policy of the United States opposes discrimination based on gender. Even though the Federal Equal Rights Amendment was never formally adopted, its precepts are clearly incorporated into numerous state and federal statutes. Many states have adopted their own Equal Rights Amendment. Title VII of the Civil Rights Act of 1964 and the Fourteenth Amendment to the Constitution are the primary authorities which prohibit sexual discrimination. The Equal Employment Opportunity Commission ("EEOC") in its August 27, 1990 Policy Guidance based on Title VII, announced that an employer cannot establish different parental leave benefits for male and female employees without violating Title VII. Moreover, the EEOC held that a sex-based differential for child care leave (beyond the period of a medical disability) is not justified because gender is irrelevant to benefit questions and because "stereotypical characteristics" about the child care duties of working females versus working males do not provide a valid defense to clear violations of the Civil Rights Act. The EEOC also cautioned against any attempt to circumvent the issue by facially neutral policies which result in an adverse impact on fathers. For example, plans which limit child care leave to employees with working spouses, to married employees whose income is less than half the household income, or to employees whose spouse is not also on leave are all viewed as sexually discriminatory violations of Title VII.

It is astounding that such clarity on gender bias exists in the area of employment and is completely absent in the area of domestic relations. The domestic relations industry would never withstand close judicial scrutiny of its many gender neutral policies which have known or foreseeable adverse impact based on

sexual demographic characteristics of men and women.[13] Hopefully, the benefit of federal initiatives, such as the Congressional review of the recommendations of this Commission will begin to question the sexual/gender bias which pervades state custody laws and practices.

Joint Custody as a Financial Issue
For Women

The popular view of divorce is that it contributes to the impoverishment of women and children. This Commission is asked to review the Article entitled "Joint Custody, Feminism and the Dependency Dilemma" which was published in the 1986 Berkeley Women's Law Journal. The Article acknowledges the correlation between joint custody and child support compliance and asserts that joint custody offers financial opportunities to women which are otherwise unavailable to a single parent. The Article is excellent, except for the assertion at page 39 that "women and children should not have to pay for joint custody by accepting a standard of living considerably below what the parties enjoyed during the marriage." This issue confuses financial child support and alimony. In addition, an appropriate reduction in child support to reflect the child's expenses incurred directly by the father, inures to the child's benefit and is difficult to criticize.

Karen DeCrow, the past National President of NOW, in her address to the 1982 Convention of the National Congress For Men held in Detroit, Michigan made several salient points which are echoed herein during her speech she entitled "Holding a Revolution; Only Half the Participants Came", as follows:

> Men are not money machines
>
> "What is it I've been saying since the late 60's: Men are not money machines. Men are not put on this earth to support women. Women are not put on this earth to be supported. Women and children should not be lumped together

[13]For example, the "primary caretaker" theory currently in vogue as a substitute for statutory maternal preference in child custody, is first and foremost a device to maximize the number of cases in which the Court will be compelled to award sole custody to the mother. It is a warm, fuzzy word with superficial appeal. However, every definition which has been put forward or this term has systematically and purposefully counted and recounted the types of tasks mothers traditionally perform while excluding the tasks nurturing fathers typically perform. See e.g. definition by Professor Carol Bruch which gave custodial preference to the parent, "regardless of gender" who has devoted significantly greater time and effort in....breastfeeding.

to be taken care of by men....

Now, the way I came to the position that men should not be money machines was not because I didn't like someone, you know, buying me furs and jewels. It was because I concluded very early in life that being a dependent is no advantage....

Now, let me give some items that I hope will serve as examples. Remember the palimony case? Marvin vs. Marvin. I loved every minute of it. I thought it was high humor. It was better than Saturday Night Live by a mile....I think it is a good example of "Men-the-Money-Machine". My favorite line in the whole case, and believe me there are some good ones, was when the current wife of Lee Marvin was interviewed about her husband having to pay out all this money to his former female friend. She said, 'Why does she have to have my husband support her?' Now that is why you men who want custody aren't getting it. I mean there it is in a nutshell. It wasn't, you know, God forbid, that she should go out and work, or that she should find some other woman to support her. No! Why doesn't she find some other man. Why my husband, of all people?

Who should support Michelle Triola Marvin, Lee Marvin's former live-in friend? Should it have to be Mrs. Marvin's husband or another man? ...Man A or Man B, or another nice guy living down my street? You know, maybe we could get him to do it!"

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RESPONSE TO SPECIFIC PROPOSALS BY THE COMMISSION

The following analysis takes each of the provisions recommended by the Majority Report and briefly responds to the relative merits or deficiencies with each provision. This Minority Report is edited and does not contain the specific recommendations on each item in the Majority Report because inadequate space was allowed. (Any individual desiring the full Report or authorities cited, including specific language recommended for each item addressed by the full Commission is asked to contact Phillip Holman, Esq., at 400 Renaissance Center, Suite 1900, Detroit, Michigan 48243, telephone number (313) 259-1144.)

In general, parental access should be added to each recommendation by substitution of domestic relations order whenever the recommendation contains the term "support action", or similar reference to only a portion of the court order. Little justification exists for adopting one standard for financial child support enforcement and another for parental access. For example, the Commission would only recommend full faith and credit be given to one line of the domestic relations order. Each recommendation of the Commission should be appropriately modified to apply to the entire domestic relations order with equal or greater concern and resources allocated to promoting equal parental access. Financial obligations should be imposed equally on both parents and accountability equal to or greater than the standards applicable to social security benefits received for a dependant child adopted. More importantly, cost benefit analysis should be implemented on each provision before such measures are adopted. There is no evidence that any of the recommendations will result in significant improvements in either paternity establishment or increased child support compliance. Small innovative test programs to ascertain feasibility and evaluate adverse and unintended consequences should be considered and critically evaluated.

1. Jurisdiction and Choice of Law. Excessively broad jurisdictional recommendations are recommended reflecting concern only for the custodial parent and enforcement agencies. The Commission would grant jurisdiction based solely on ability to serve the noncustodial parent in the state - such as when exercising parental access (visitation). Similarly, the mere act of acknowledging paternity with an enforcement agency or putative fathers registry within the state would confer jurisdiction. Such measures hardly encourage acknowledgement or involvement by putative fathers, nor do they reflect adequate concern for due process. Sadly, the lack of concern for fathers continues throughout the Commission's Report.

The Minority Report encourages and supports adoption of the portion of the jurisdictional recommendations of the Commission providing for the state in which the parents resided during the marriage to generally retain exclusive jurisdiction. This provision is one of the few issues raised by the Commission in which the concerns of noncustodial parents prevailed over significant efforts to prefer the custodial parent.

The removal of children from the immediate vicinity of the other parent should generally be discouraged (see SOAP). Congress is asked to seriously review the extent of the problem of interstate flight to avoid parental access in the event efforts to adopt child-state jurisdiction are renewed during Congressional deliberations. The opposition to the Commission's decision asked for the residence of the children (i.e., the residence of the custodial parent) to govern. Among the concerns with such provisions are the following:

(1) Forum shopping by the custodial parent;
(2) Bias against out-of-state absent parent; and
(3) Additional financial burden on parent who has already lost the ability to preserve the parent/child bond and need for healthy contact and generally is already required to incur additional transportation costs as the result of a decision made by the other parent.

2. Uniform Interstate Family Support Act. This Report does not support enactment of the Uniform Interstate Financial Support Act ("UIFSA"), which essentially attempts to provide the broadest possible jurisdictional base for financial child support enforcement. At the last meeting of the Commission, a decision was made to support adoption of a prior provision of UIFSA by the Uniform Laws Commission because the latest draft eliminated one broad jurisdictional provision recently held unconstitutional. This Commission is inadequately concerned about the need for constitutional due process and desires to allow child enforcement proceedings within the state of residence of the custodial parent, with no concern for the other parent. It is important to realize that the Uniform Laws Commission had no fathers' rights representative and thus had even less diversity in its membership.

3. Expansion of the Federal Parent Locate System and State Cooperative Agreements for Locate. Inappropriate intrusion into the lives of affected individuals should be considered and avoided without far greater assurance of benefit than presently exists. This Report does not otherwise take exception to the proposed expansion other than by way of questioning whether the funds would not be better spent elsewhere.

4. Locate. This Report does not take stringent exception to the substantive provisions set forth under this heading, except as otherwise set forth herein. However, with regard to Subparagraph 4(b), rather than establishing an additional roadblock or review process, such information should be automatically available to both parents in the absence of a valid and outstanding court order restricting one parent's access to the child in the form of a protective order which expressly restricts disclosure of such information by the federal and state parent locate system. Unless determined at such level, access will almost inevitably be denied in practice based on unsubstantiated allegations by the custodial parent.

5. National Reporting of New Hires. The national reporting of new hires, at least in the manner proposed, is extremely discriminatory against noncustodial parents. In light of the Braver study and SOAP, it is clear that unemployment is the primary cause for noncompliance. Accordingly, this provision may well have the unintended effect of making it more difficult for such individuals to obtain employment and thereby unable to provide financial support. Such discrimination is a major concern for individuals who have only limited employment opportunities. Finally, such individuals are more likely to be hired by smaller employers who would have to enact procedures to accommodate the additional legislation and incur the necessary costs or face the severe sanctions imposed by the proposed legislation.

At a minimum, the national reporting of new hires should apply to all divorced parents. This would aid in locating custodial parents who are in violation of parental access orders. In addition, custodial parents should be required to disclose the number of days of parental access ordered by the court on a form which contains the federal public policy to preserve the child's emotional bonds and need for healthy contact with both parents, together with available sanctions for access denial. Finally, a program the magnitude of the war on drugs, should be instituted to reverse the national crisis stemming from single parent households and parental access denial.

6. Service of Process. Proper service of process is an essential element of the Constitutional guarantee of due process. The recommendations for alternate service appear designed primarily to remove procedural protection designed to ensure actual notice to parties to a litigation. Although the Minority Report encourages simplified procedures, all such procedures should be evaluated and tested with the primary consideration given to due process and a determination of whether such notice is actually received. Any method of

service which fails to provide actual and timely notice to enable the party receiving such notice an opportunity to respond should be eliminated. For example, the recommendations for service on designated agents for military employees, including employees who are stationed outside the United States, impose no obligation on the military to forward the notice to the federal employee and, in all likelihood, would result in most proceedings being heard substantially prior to receipt of any actual notice, much less in time to prepare a response.

7. Notice to Agencies and Custodial Parents. This provision is incredibly intrusive on the private relationship between former spouses, particularly in situations which do not involve AFDC. The concept that child support enforcement agencies would be able (and implicitly encouraged) to proceed with a collection proceeding or a child support modification without actual notification to the custodial parent is extremely counter-productive. Such agencies have no way of knowing the extent of informal support being paid by such parties and whether the custodial parent has any desire to encourage the disruptive procedures inherent in a child support proceeding. The recommendation should not be enacted, except with regard to AFDC cases.

8. Statewide Uniformity. The most offensive provision of this paragraph is the recommendation that jurisdiction be transferred to the county in which the child resides. This provision should be consistent with the provision for interstate jurisdiction, namely that the county with original jurisdiction continues so long as the child or either party resides in such county. Both the Braver study and SOAP make it clear that the distance between parents and the ability to maintain regular contact is critically important to child support compliance. Governmental policy should take all actions reasonably available to discourage any reduction in parent-child contact. Relocation within a single state can involve great distances, often far greater than moving across a state line. Accordingly, reducing the cost to the parent who initiated the move should be discouraged.

9. Parentage. This Report recommends that the primary focus for paternity actions be directed towards maximizing the day-to-day involvement of the father in paternity cases. Federal assistance should not be eliminated where the parents marry and all federal assistance should be oriented towards allowing recipients to become self-sufficient and to encourage family formation.

Within a state, the venue for parentage determination should be the county of residence of the alleged parent and all federal and state agencies should take a proactive role to

encourage and maximize the bond between father and child in all paternity cases. This Report strongly supports the recommendation for nonadversarial proceedings, but suggests that each of the provisions of this section needs to clearly delineate the importance of increased parental access and educational material consistent with recommendations for decriminalization, and minimizing the adversarial nature of domestic relation and paternity proceedings and to give access priority, rather than collection. In the long run this will clearly serve to the benefit of all parents, children and federal support obligations.

10. Interstate Evidence. This recommendation goes well beyond any reasonable search requirement. It would require disclosure of proprietary business and personal information, is overly broad to address legitimate concerns and should be limited to necessary information. General access to all income information, regardless of its source, is too broad and too intrusive. Each provision should apply equally to all portions of the domestic relations order.

11. Fair Credit Reporting Act. This Report supports the Commission's recommendation.

12. Guidelines. Due to the partisan nature of the current Commission and the proposed commission, this Report cannot support this recommendation. If a successor commission is appointed, Congress should combine the issues of access and financial child support compliance and insure that any commission is nonpartisan by carefully balancing its membership between individuals who are inclined to advocate on behalf of custodial and noncustodial parents. Neutral parties with substantial contacts to both parents should be the primary constituency. Such commission should clearly delineate a minimum right of parental access in all cases (except where child abuse or neglect is established by clear and convincing evidence). Current guidelines are anti-family and have been shown ineffective in generating just and appropriate awards.

Among the more notable exceptions taken to the Majority Report is the implication in Subparagraph B(3) that the custodial parent could preclude a downward modification by opting out of any review and/or modification. Clearly, an opt-in provision with simultaneous notice to both parents is more desirable, vis-a-vis minimizing the disruptive nature of intervention. This Report suggests that as a component of any such commission, states should be required to review, evaluate and monitor the gender bias of all judges, lawyers, financial child support enforcement personnel, etc., and take appropriate educational or other remedial measures when such gender bias is implied from a statistical analysis of custody,

parental access or financial child support decisions. Affirmative action goals to rapidly eliminate gender disparity in each such area should be required in all states.

13. Duration of Support. This Report strongly objects to the duration of support beyond the age of majority. Much like the desire by many parents in intact families, a critical function of parenting involves the ability to withhold financial resources in order to encourage and motivate educational pursuits and programs deemed appropriate by the parent making such expenditures, or to encourage self-reliance. Unless our government is prepared to require that all parents provide a college education to their children, this provision violates equal protection. Where disability is involved, post-majority child support should be optional, not mandated as set forth in the Majority Report, and should apply equally to both parents.

14. Presumed Address of Obligor and Obligee. Any laws requiring notification to courts should apply to both obligors and obligees. Moreover, personal service is the best manner of notification and it is inappropriate for the federal government to mandate such an inadequate form of notification as first class mail to the address of record. This provision will predictably create many injustices. The population involved is by definition mobile, unstable and understandably views the court and child support enforcement agencies with distrust. Until adequate checks are adopted to remove the bias against noncustodial parents, the administrative convenience of federal and state agencies should not be given greater importance than the due process rights of obligors.

15. Social Security Numbers. Listing social security numbers on all domestic relations orders is already widespread, but the marriage license listing and any concern with the inherent negative implications about the likelihood of divorce should be left to each state. However, perhaps premarital agreements on custody, financial child support and parental access should be encouraged and generally enforced (unless clearly contrary to the best interest of the children involved).

16. Court Management Practices. The referenced abstract should be available for review by both parties and each given an opportunity to correct inaccurate information. This Report urges the federal government to mandate the elimination of all derogatory terms such as "visitation", "custody", etc. In addition, preferential trial settings should be granted to all domestic relations matters, rather than merely to paternity proceedings.

17. State Child Support Agencies Standards and Practices. Congress should reject as inappropriate, federal child support enforcement agencies involved in advocating for their own vested interests. It is inappropriate for a federal agency to engage in partisan activity in support of one political position. This violates federal regulations on the behavior of individuals employed by the federal government, violates state constitutional clauses against exclusive rights and privileges, and violates the Fifth and Fourteenth Amendments. Any informal administrative procedures should be carefully reviewed to avoid unfair and unjust results without adequate due process. Child support enforcement agencies have a tendency to choose simplicity over either accuracy or fairness. Such record does not comport with the grant of additional powers and responsibilities. Advocating to provide the maximum economic security is not appropriate, since the maximum economic security of the child would confiscate all income of both parents. Moreover, not all custodial parents are poor, and not all noncustodial parents are wealthy. Instead, the only allowable standard should be a determination of the appropriate and reasonable cost of child expenses, imposed on both parents based on their relative income and expenditures by each parent directly on behalf of the children. Allocation of such expenses based on the percentage of parenting is appropriate for ease of computation. (See, e.g., Michigan's Shared Economic Responsibility Formula). SOAP discloses [SOAP pg. viii] that although formulas for setting award levels increase the average amounts of award levels, they decrease compliance. Moreover, not all custodial parents are poor, and not all noncustodial parents are wealthy. Indeed, the Census Report released on January 10, 1991 found that white female heads of household have more net assets ($22,100), than white male heads of households ($16,580).

Child support enforcement agencies have adequate power and authority without establishing themselves as judicial tribunals. Similarly, such agencies should not be identified with either party, but rather enforce the order of the court. Their primary duty should be to ensure that both parents are properly complying with their obligation to support their children, including ensuring the appropriate application of funds provided to the custodial parent. Federal policy should make it clear that child support enforcement agencies owe an equal obligation to noncustodial parents and should focus an equal amount of funds and staff to addressing such concerns as parental access and accountability. Accordingly, any brochures prepared by OCSE should clearly promote involvement by both parents and should be distributed equally to both custodial and noncustodial parents.

Legal and administrative actions should be equally available to all parents and public service announcements should be equally divided between financial child support compliance and access enforcement. Any written material should clearly delineate the rights and obligations of both parents. Enforcement in child support should only occur when initiated by one of the parents in order to avoid disturbing an amicable relationship based on the then current status quo. All public relations material should avoid sterectypes and misinformation, such as: implying that noncompliance results because parents do not love their children, or are irresponsible, that nonpayment is a leading cause of poverty for children; that greater enforcement significantly reduces the taxpayers' expense; or that most custodial parents are poor while most noncustodial parents are wealthy. The reality that: "the impoverishment of women and children results primarily from never married single parent households and divorce in families with only marginal household income prior to the divorce" should be accurately reported. Finally, equal access should be given to obligors and obligees, and their counsel.

18. Direct Income Withholding. The Commission ignores the huge costs to employers of direct income withholding. Prior to implementation of this provision, adequate data on compliance for employed noncustodial parents should be critically reviewed to ascertain whether such costs are justified and offset the adverse impact on noncustodial parents. Any direct income withholding should be carefully reviewed to evaluate and eliminate the difficulties with intractable orders which prevent or delay proper adjustments. If enacted, employers should be required to adjust withholding upon request by the employee and notification to the appropriate court or agency. In the event any employer involvement is recommended or mandated, the employer should be obligated to notify the designated court upon termination of employment. In addition, standard forms should be required to be provided to the affected employee and any downward modification of child support orders should be effective as of the date of termination of employment, subject to a requirement that the employer be required to reimburse the employee for improper delay. The simplified pro se proceedings for downward modification of child support which were required under the Family Support Act of 1988, should be enforced and put into effect in all states without further delay. Child support agencies should vigorously pursue downward modifications when appropriate, with equal vigor currently applied to collection efforts.

19. Enforcement. The enforcement provisions set forth herein, such as revocations of driver's license and occupational and professional license, clearly proceed from

the false assumptions previously addressed. Since unemployment is the primary contributing factor to noncompliance, these provisions are grossly misdirected and will both diminish compliance and further alienate noncustodial parents by the criminalization of their marital and parental status. Premature access to retirement funds, notwithstanding substantial tax penalties, ignores due process and if allowed, this should only be applied to willful and flagrant violations.

Subparagraph (q) regarding the statutes of limitation should be amended to require that any back child support collected after the child attains age 18 should be paid directly to the child. The funds were ordered by the court to be used on behalf of the child and if never received, could never have been spent by the custodial parent. Payments to the custodial parent are not in the best interest of the adult children of divorce.

Enforcement of financial child support is already the most burdensome form of debt collection in the United States. Our tax revenues guarantee that the debtor's wages will be garnished, tax refunds will be intercepted, liens will be placed on property and that delinquent obligors will be placed in the only form of debtors prison allowed to survive in the United States. Despite the multitude of enforcement devices already available, many contend that compliance remains unsatisfactory. The time has come to ask the question "why?". Can Congress reasonably enact the proposed legislation until someone collects data regarding the number of delinquent obligors who are only marginally employed, unemployed, disabled, dead, in jail, supporting second families, or refusing to pay as a form of civil disobedience because they have been unable to see their children.

20. Federal Employees and Benefit Recipients. This provision clearly misunderstands the dire straits of noncustodial parents receiving disability payments. Such means tested receipts should be excluded from income unless dramatically beyond the level necessary for subsistence.

21. Criminal Nonsupport. This provision is inconsistent with any desire to decriminalize and reduce the adversary nature of domestic relations proceedings. As such, it can only serve to increase the conflict and exacerbate the existing problems. If criminalization is sought, denial of parental access should result in equal or greater sanctions and enforcement by all courts and governmental agencies.

22. Health-care Support. Thirty-five million Americans do not have health insurance. Making health insurance mandatory for parents after divorce shows inadequate insight

into the economic realities of the individuals affected. Health care provided to employees without additional cost should always be given priority without regard to the parent for whom such benefits are available. Although additional insurance coverage is beneficial, current financial support obligations already exceed the financial ability of many parents. Any amount required to be spent should clearly reduce the obligations presently being imposed by states with excessive formulas or which do not give adequate consideration to the income of the custodial parent or the expenses incurred by the noncustodial parent in connection with his or her parental access. Such expenditures by the noncustodial parent often exceed the amount of child support ordered by the court, particularly in the case of the most involved parents whose efforts should be applauded rather than hindered by creating inappropriate financial roadblocks. Any requirement for W-4 disclosure should apply equally to the obligee.

23. Young Parents. Federal programs should encourage family formation, shared parenting, joint responsibility by both the custodial and noncustodial parent for financial and emotional child support of their children, especially in paternity cases. The current insensitivity to fathers by enforcement agencies incident to implementing the Family Support Act of 1988 have doubled the percentage of fathers who abandon federal programs from under 30% to over 60% in two years.

24. Indian Children and Tribal Courts. Due to the Commission member's professional conflict in connection with his employment, no position is taken on this provision.

25. International Cases. Full reciprocity is supported.

26. Interstate Compacts. Cost benefit analysis is required.

27. Bankruptcy. Child support obligations should be excluded from discharge in bankruptcy only where willful misconduct is clearly established. Current policies falsely presume improper motive and do not allow discharge in bankruptcy. Loss of the fresh start allowed by bankruptcy creates only desperation and eliminates any employment incentive.

28. Collection and Distribution of Support. Prior state experience shows that credit card authorization is irrelevant, since noncompliance generally involves parents without adequate credit to obtain credit cards. Similarly, delinquent obligors have inadequate funds in bank accounts to pay the amounts involved. Delinquent obligors simply do not have

sufficient assets to meet their financial obligations. The attempt to overwhelm obligors with the enormity of the cost of federal programs is unconscionable and appears designed to hide the true cost of the proposals. Benefits collected should be paid first to children with adequate standards of accountability applicable to both parents.

29. Funding and Incentives for Child Support Agencies. All funding incentives should be eliminated due to the inherent tendency to alienate public employees from noncustodial parents and to encourage inappropriate collection measures.

30. Placement and Role of the Federal Child Support Agency. A complete reorganization of federal child support agencies is encouraged, with the primary importance given to a focus of the best interests of children, rather than the partisan collection efforts presently given priority. The partisan nature of the proposed commission would dictate inappropriate and partisan recommendations. Until the current recommendations are critically reviewed and revised, this Report cannot support the Commission's proposal.

31. National Advisory Committee for Child Support. Any advisory committee should have an equal voice from custodial and noncustodial parents, with financial child support agencies deemed to be representing custodial parents, absent substantial change in current practices. Any budget for the advisory committee should clearly delineate equal funding of concerns of custodial and noncustodial parents.

32. Training. All programs should equally apply to parental access and federal expenditures should be evaluated based on reliable data and a properly applied cost benefit analysis.

33. Audits. Federal funds should be tied to compliance with parental access objectives and whether child support orders are immediately reduced for unemployment.

34. Interstate Data Collection. Data collection as set forth herein is recommended.

35. Child Support Assurance. Unintended consequences of legislation such as AFDC which discourage family formation and encourage disintegration should be carefully evaluated.

36. Children's Trust Fund. Any such fund should be equally distributed to access enforcement and financial child support.

37. Future Commissions. Any such commission should give parental access highest priority and should be carefully evaluated for partisan membership. The federal role in post-divorce should be primarily devoted to the best interests of children. Measures to correct prior abuses of the federal and state programs which have contributed to the national crisis of single parent households should be given priority. Promoting the involvement of both parents in the financial and emotional support of their children before, during and after divorce should be the primary concern.

38. Federal Role in Enforcement. The primary role of the federal government should be to eliminate the present gender bias of existing courts, enforcement agencies, state and federal programs, etc. which were intended to benefit children and have the unintended effect of alienating noncustodial parents and reducing their involvement in their children's lives, contribute to family disintegration and or discourage family formation.

Absent the restoration of the fundamental importance of both parents and sensitivity to preserving the child's emotional bonds and healthy contact with both parents, the future of children in our society will continue to portend disfunction and despair. Hope for substantial and beneficial improvement in the quality of life for our progeny lies in the changing of the American credo from "the flag, motherhood, and apple pie" to "the flag, motherhood, and fatherhood."

Thank you for your time and consideration.

Sincerely,

Don A. Chavez, MSW, L.I.S.W.
Member U. S. Commission on Interstate Child Support

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4) Ron Henry, Esq., Baker & Botts, Washington, DC office

MINORITY (DISSENTING) REPORT OF THE

U. S. COMMISSION ON INTERSTATE CHILD SUPPORT

By: Don A. Chavez, MSW, L.I.S.W.

Date Submitted: June 10, 1992

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INTRODUCTION This Commission has been asked by the Congress of the United States of America to provide its citizens with recommendations to address one of the most perplexing realities of our modern society, the difficulties faced by children of divorce whose parents reside in different states. The Commission was given a unique opportunity to evaluate and provide new insight into the devastation and trauma faced by a generation of this nation's children.[1] Extensive analysis and testimony was generated by and presented to the Commission through many professionals and advocates, as the Commission met over the last twenty months at locations across the Country. The ultimate question Congress must now answer is whether the recommendations contained in the majority report of the Commission will serve to the benefit or detriment of the innocent children whose lives have forever been torn apart by their parents' divorce.

The strength of the emotional bonds within the family is the single most critical determinant for launching positive and well adjusted children into adulthood, regardless of whether the family is intact or separated. Government and societal forces to exclude or drive fathers out of the lives of their children is manifesting itself in catastrophic proportions in every facet of American life, including loss of emotional and financial child support.

There are three false assumptions upon which a decade of bureaucratic expansionism in child support enforcement has been based. The first and foremost is that nonpayment of court ordered child support is a substantial or primary cause of poverty among children. The second is that financial child support is willingly being underpaid by irresponsible noncustodial parents, and the third is that the primary and exclusive role of noncustodial parents is to provide financial resources to the custodial parent.

For over a decade now, divorced and other single fathers have

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[1] The percentage of children living in households with only one adult tripled from 1960 to 1988, Fuchs, Victor R. and Diane M. Reklis, America's Children: Economic Perspectives and Policy Options, Science Vol 255, p 43.

served as political scapegoats for a range of social ills, most notably poverty. From the roots of the politics of division and gender bias and encouraged by special interest groups, the most expensive child support enforcement experiment in the history of America has arisen. However, this Commission continues to advise expansion of criminal sanctions and massive additional funding. This Report recommends that Congress refocus scarce funds as well as its attention, on more sincere proposals to address the applicable social problems.

Careful study of child poverty in single parent households with valid child support orders, shows poverty in these households to be in relative proportion to the poverty rate of the entire United States population. Nonpayment of court ordered child support is not the primary cause of child poverty in America. Instead, poverty prevents financial child support compliance. The largest single cause for inadequate parental support by fathers is that no support order is ever entered. The Bureau of the Census report issued by the U. S. Department of Commerce on Child Support and Alimony: 1989 issued September, 1991 reported that only 57.7 percent of women with children included in the Census were awarded financial child support. The data presented is misleading for enforcement purposes, since it included children whose fathers were deceased and adult children under age 21 for whom the support order no longer applied. However, it also noted that only 23.9% of never married women were awarded child support. Enforcement measures, no matter how effective, cannot impact such cases. (See Exhibit A)

One of the driving forces behind strengthening of child support enforcement are misunderstood studies such as those by Garfinkel and Ollerich (1983).[2] They postulated that divorce

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[2]Garfinkel, Irwin, and Donald Ollerich, 1983, Distributional Impact of Alternative Child Support Systems, Policy Studies Journal, Vol. 12, No. 1, September, 1983, pp 119-129. Similarly, an OCSE 1985 report by Ronald Haskins, *et al* Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families, Final Report, Grant # 18-P-00259-4-01, Office of Child Support Enforcement, April 1, 1985, made a crude estimate based on simplistic average income data and selection of two states' excessive child support formulas, that child support awards could be increased between $10 Billion and $26.6 Billion nationwide. He assumed that all noncustodial fathers were deserters responsible for the increase in AFDC spending and ignored the expenses incurred by involved fathers who would be financially foreclosed from involved parenting, that the AFDC problem primarily results from never married mothers with no support orders and that most financially able fathers support their children. Haskins' errors were compounded by Williams, Robert G., 1987, Development of Guidelines For Child Support Orders: Final Report, U. S. Department of Health and Human Services, Office of Child Support Enforcement, March, 1987 which presented the difference between (continued...)

reform could reduce the "poverty gap" -- the difference between the incomes of poor families headed by single mothers and the amount of money they would need to move above the poverty level -- by 27 percent. In arriving at this estimate, it was assumed that all eligible custodial parents would have a valid child support order, and all noncustodial parents would be fully employed. If these two conditions were achieved, a significant reduction in AFDC expense would result. But neither goal demands expansion of enforcement efforts in cases where valid support orders exist.

Most noncustodial parents of AFDC children do not earn enough to pay as much child support as their children are already receiving in AFDC benefits. Enforcement measures will not cure unemployment. The waste from experimental programs has already run into billions of dollars. The federal deficit for child support enforcement for the last two years has been over a half billion dollars per year.

Child support reforms of the 1980's have actually contributed to a deterioration of the statistical record on child support payment. Worse yet, the policies serve to drive fathers away from their children, an effect of government policy that continues to be a major concern. The Family Support Act provisions on child support awards, as implemented by the U. S. Office of Child Support Enforcement, stripped noncustodial parents of funds necessary to support children during periods of parental access (visitation).[3]

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[2](...continued)
Haskins' hypothetical maximum and the amount of existing awards as an "adequacy gap" in awards, rather than acknowledging the simplistic assumptions used to maximize the "potential" collections in Haskins' report. The resulting confusion, when states were unable to close a gap actually caused by never married mothers with no support order, led several states to increase awards to middle and upper income mothers or to eliminate the reduced support awards for shared or joint custody. Such actions, albeit made in the name of reducing poverty, did nothing to aid the AFDC problem. For an excellent analysis of these issues, see the proceedings paper of Roger Gay, M. S., A Brief History of Prevailing Child Support Doctrine, Proceedings of the Sixth Annual Conference of The National Council For Children's Rights, March 19-22, 1992, Arlington, VA, pp 24-27.

[3]See *e.g.* Anderson-Khleif, Susan, Divorced But Not Disastrous: How to Improve The Ties Between Single Parent Mothers, Divorced Fathers, and the Children, Prentice-Hall, 1982. Often fathers cannot pay their support, cannot afford activities with the children... If the divorced father...is ordered to pay an amount of support that makes it impossible to meet his own living expenses and pay for visitation activities--he probably will not see much of his children." pp 148-150.

At the same time, they have put payment of all that is awarded further out of the reach of many parents.

The Majority Report of the Commission can be summarized as recommendations to force the noncustodial parent to defend a financial child support proceeding in a forum most convenient to the custodial parent or the child support agency, for measures to anticipate and prevent noncompliance, additional (draconian) laws to increase sanctions for failure to comply with child support orders, and an increased bureaucracy to administer the recommended programs. As members of agencies devoted to financial child support enforcement, they could only be expected to view the solution myopically as a need for an increased bureaucracy devoted to the agendas on which their own agencies are based. This report does not intend to suggest that the members of the Commission failed to attempt to responsibly carry out the mission they were given by Congress. The Commission simply lacked adequate diversity for any other view to prevail.

The ultimate question to be asked in evaluating the recommendations made by this Commission is deceptively easy to state, but extremely difficult to answer. The recommendations should not be evaluated merely as to their impact on the federal budget deficit, their impact on any governmental agency, nor indeed, their impact on any public interest group. Instead, ask how each provision will effect the needs and concerns of each child in this country who is caught in the middle of his or her parents' divorce. This presentation will address the need of children of divorce with extensive reliance on the data revealed September, 1991, on Child Support and Alimony by the Bureau of Census, the 1988 Survey of Absent Parents conducted by the U. S. Department of Health and Human Services and Professor Sanford Braver's research criticizing the bias in the Census findings.

The challenge now facing Congress is to legislate protection which will best enclose and protect children of divorce in their world which is now split between two households. Few members of Congress personally experienced the anguish of their parents' divorce and never wet a pillow at night fearful of never seeing one of their parents again. Do the recommendations reflect new insight into the causes for inadequate compliance with child support obligations and provide new hope for Johnnie and Susie's future? This Report asks Congress: "Is there not a way to encourage responsible parenting other than by fashioning new and bigger sticks? Where is the concern for the child's relationship with the noncustodial parent other than as a hook for obtaining transfer payments between the parents?"

To a nation that views children as its most precious resource, the specter of a parent callously and selfishly abandoning all parental responsibilities, including financial child support obligations, understandably evokes moral condemnation. Everyone

agrees that children should be supported. The question is whether the Courts are structuring fair financial child support arrangements. Unless custody, parental access (visitation) and support amounts are fairly established, there is no moral authority for enforcement. Surprisingly, a parent who fails to provide the much more important child support, **EMOTIONAL CHILD SUPPORT**, or who blocks such child support by limiting parental access, evokes no such moral outrage.

The American dream of "a clapboard house surrounded by a picket fence...children playing in the yard and parents alternately observing lovingly from the porch or joining in the fray..." has turned into a nightmare. The nuclear family has been replaced by single parent households, with one parent relegated to the role of an occasional visitor by judicial fiat, and by teenage mothers whose children never know their father. On a broader scale, our inner cities are demographically recognizable by many single statistics, including crime, substance abuse, teenage pregnancy rates and poverty. Ironically, the nation seems determined to ignore (or attempt to explain away) the statistical correlation between such enormous social problems and single parent households, even though the correlation coefficient is extremely high across all social and demographic groups. As graphically illustrated in the attached Exhibit C from the U. S. Department of Health and Human Services, National Center for Health Statistics, the increased psychological problems of children of divorce are readily demonstrated and the involvement of a stepparent does little if anything to resolve such problems.[4]

Congress is asked to carefully reevaluate the recommendations of the Majority Report in light of the revelations of the Bureau of The Census report on Child Support and Alimony. For the very first time in history, the U. S. Census Bureau looked into the possible causes for noncompliance. The report found a dramatic increase in the number of households without men - up 39% between 1979 and 1989. There are now 10 million households with 16 million children living without fathers. The real villain is not divorce. In 1990, nearly 3 million (2,950,000) of the women were never married to the father of the child. That figure represents approximately 30% of the families with an "absent" father. The largest single factor accounting for the increase in AFDC rolls has been the increase in the number of families in which the parents were never married. Only 24% of the never-married women said they received their entire child support while 72% of married, separated and divorced women

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[4]Children in step-families show every bit as many problems as children in single-parent homes. See National Commission on Children, "Speaking of Kids: A National Survey," 1991; Zill, Child Trends. Thus, the concept that increased financial assistance will alleviate the emotional problems of children of divorce is not supported by the data.

acknowledged receiving their entire child support. How can any effective program to encourage (or even coerce) compliance, fail to differentiate between such extremely different situations? A father who first learns he is a parent when served with a paternity proceeding initiated as a result of AFDC payments needs dramatically different governmental assistance than a loving father who struggles against the societal and judicial bias until successfully obtaining an equal parental role after a divorce from a long term marriage. The Census Bureau combined compliance data reported by AFDC mothers with other compliance reports even though they have no direct knowledge of the amount collected and retained by the government. The Survey of Absent Parents (identified below) demonstrates that a much larger variance in reporting by custodial and noncustodial parents applies when AFDC is involved.

Even more revealing to the issues of concern to this Commission was the relationship between compliance and where the children lived. Only 63.7% of children live in the same state as their noncustodial fathers. 25.6% live in a different state and 10.7% live overseas or their whereabouts are unknown. When the children live in the same state, fathers were praised by their ex-wives as paying their child support on time and in full 81.1% of the time. When the children live in another state, payment by fathers is acknowledged to be in compliance for 65.6% of cases. When the children live overseas or their whereabouts are unknown, mothers reported full compliance of only 46.6%. (See Exhibit D)

The relationship between custody and child support compliance is very enlightening. Of fathers with joint custody, 90.2% were acknowledged by their ex-wife to pay their child support on time and in full. Of fathers with visitation rights, 79.1% were acknowledged to pay their child support on time and in full.[5] Yet

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[5]For additional studies showing a correlation between parental access and financial support compliance, see e.g. D. L. Chambers, Making Fathers Pay: The Enforcement of Child Support, (1979); J. S. Wallerstein & D. S. Huntington, Bread and Roses: Nonfinancial Issues Related to Fathers' Economic Support of Their Children Following Divorce, The Parental Child Support Obligation 135 (1983); Furstenberg, Nord, Peterson & Zill, Life Course of Children of Divorce: Marital Disruption and Parental Contact, 48 Am Soc Rev 656 (1983); S. L. Braver, I. N. Sandler & S. A. Wolchik, Non-Custodial Parents: Parents Without Children (1985) [symposium presentation at annual meeting of American Psychology Association, Los Angeles, CA)]; N. J. Salkind, The Father-Child Postdivorce Relationship and Child Support, The Parent-Child Support Obligation (1983); R. Horowitz & G. Dodson, Child Support, Custody and Visitation: A Report to State Child Support Commissions, Amer Bar Assoc, Nat Legal Resource Center for Child Advocacy and Protection, Child Support Project (July, 1985) pp 22-24.

only 55% of fathers have visitation and only 7% have joint custody. Can Congress fail to recognize that parents support children out of their love for them and that the best weapon to combat inadequate financial child support compliance by employed parents is to allow both parents a parental role in their children's lives? Sadly for Johnnie and Susie, 37.9% of fathers had neither custody nor visitation rights in 1990. But fathers with neither custody nor visitation rights paid their child support on time and in full in 44.5% of all cases. Instead of "absent parents or deadbeat dads", shouldn't the media, this Commission AND CONGRESS, through its legislation, be praising and supporting those "aborted" fathers as martyrs and commending these 45% as responsible heroes?

The Survey of Absent Parents ("SOAP") conducted by the U. S. Department of Health and Human Services ("HHS") set out to:

a) Determine the factors which influence the establishment and collection of financial child support; and
b) Provide reliable descriptions of the obligor and obligee population.

Florida and Ohio were chosen for the initial pilot survey, which was reported in 1988 and never released until the National Council for Children's Rights filed a Freedom of Information Act request. Why SOAP was never released by HHS or the recommended follow-up studies conducted is unclear, unless HHS did not like the implications revealed by accurate data. The Report presents exhaustive detail, consisting of more than 54 pages of text plus extensive attachments listing references and an appendix presenting the underlying data. The Report, prepared by Freya L. Sonenstein and Charles Calhoun, with the assistance of numerous individuals and institutions, including the Urban Institute in Washington, DC, and NORC, Social Science Research Center at the University of Chicago, provides dramatic and important insight into the issues being considered by this Congress. The Report concluded in part:

1. Amounts Reported: "Noncustodial fathers report paying a larger amount of child support than is being claimed by custodial mothers. If the fathers' reports are correct, it is possible that the child support payments are being systematically underestimated in the major data bases, because they rely solely on the reports of custodial mothers." [SOAP pg ix] Fathers reported paying 10% to 40% more child support than the mothers said they paid. [SOAP pg. iv]

2. Parental Access: Joint custody was associated with higher payment levels. ". . . payment was higher and compliance was higher." [SOAP pg. viii]. "Weekly contact between noncustodial parents and their children were positively associated with payment levels and compliance levels." "These findings indicate that efforts to keep noncustodial parents involved with their children and to decrease hostility between parents may increase payment and compliance levels." (emphasis added) [SOAP pg. viii]

3. Poverty levels among poorer families ranged from 40% for custodial parents to 15% for noncustodial parents. Child support

enforcement records sampled reflected higher poverty. In Ohio 69% of custodial parents were listed as poor, compared to 49% of noncustodial parents. However, with as much as one-half of the payor population in poverty, financial problems clearly impact compliance. [SOAP pg. 21]

4. Methods of dealing with divorce and post-divorce family which encourage cooperation result, in higher compliance and happier, better adjusted children. [SOAP pg. viii]

5. "... analysis revealed that compliance was positively associated with the annual income of the noncustodial parent and the custodial parent (excluding child support transfers), remarriage by the noncustodial parent, joint custody arrangements, weekly contact between the noncustodial parent and child, and residence within one mile of the child." [SOAP pg. vi]

6. "The absence of this information is a major stumbling block for the development of a coherent and informed national child support policy." (emphasis added) [SOAP pg. ix]

Although parents cannot be forced to love their children, their love can be poisoned by a judicial system that views their relationship with their own children with apathy, at best, and hostility, at worst. Our society generally denies noncustodial parents a parental role after a divorce and fails to enforce the nominal access traditionally granted. Our financial child support enforcement agencies view them merely as anonymous cash donors with no empathy for the hole left in their hearts when their children are amputated from their lives. The pain of loss is not gender specific, as is evidenced by the national support group, Mothers Without Custody.

Another excellent report, Noncustodial Parent's Report of Child Support Payments, published in Family Relations, 1991, 40 180-185 by Professor of Psychology at Arizona State University, Sanford L. Braver. His study, which was funded by a grant from the National Institute of Child Health and Human Development, presents evidence which is so compelling that Congress should insist that no further child support enforcement programs be funded until after adequate reliable data is available. Professor's Braver's study evaluates financial child support compliance based on inquiries to custodial and noncustodial parents and a review of court records. Dr. Braver's findings stand in uncontested contrast to the current view of the noncompliance problem. His report states in salient part:

> "According to the compliance ratio figures, divorced mothers report receiving between two thirds and three quarters of what they are owed. These figures are considerably less alarming than any previous portrayal of the extent of the nonpayment problem.
>
> Second, the picture changes markedly when the (matched and full sampled) fathers are queried....According to them,

only 4% pay nothing at all, and they report paying better than 90% of what is owed. According to what they tell us, child support nonpayment is barely a problem at all.

Despite the large mean differences, there was some correspondence between mother's and father's report of their standing relative to other families. A correlation of .85 was found between how much the mother and father say was paid in the last twelve months, and a .60 correlation was found between their respective reports of the percentage of what was owed that was paid. Thus, the father's report of the percent of what was owed that was paid can be predicted very well from the mothers, but a very substantial constant, about 27% must be added....

Predictors of Nonpayment. Table three (attached to this Report as Exhibit (B)) presents some correlates of payment, in terms of percentage paid (both by custodial parent's and noncustodial parent's report). Custodial parent's race (whites receive more) and custodial parents and noncustodial parent's education are significant correlates. Of more impact are the indexes of ability to pay. These include noncustodial parent's income, how much child support was owed, how much child support per child was owed, and the percent of noncustodial parent's income that was owed. The biggest single factor appears to be employment (assessed by the question: "Since we last interviewed you one year ago, has there been any time that you did not work, excluding vacations and sick time?"): a correlation of .48 was found (for custodial parent's report: .20 for noncustodial parent's report) between the noncustodial parent's unemployment and percent paid. Thus, whether or not the noncustodial parent has been unemployed at all in the previous year is the strongest predictor of payment as yet identified. When attention is restricted to only families where the absent parent was not unemployed at all in the previous 12 months, the payment ratios climb to 80% and 100% for custodial and noncustodial parents' reports, respectively.[6]

Discussion and Policy Implications. Previous research on child support is primarily based on one of two data sources,

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[6]In reviewing this paragraph, each reader is asked to keep in mind the point which was not even addressed by the article; i.e. where noncustodial parents are unemployed and no adjustment is made in their financial child support obligation (whether from fear of involvement with the divorce industry, financial inability to afford a lawyer or from pride which kept the parent from admitting they needed a reduction) the delinquency in the amount legally owed, grossly exceeds a fair determination of the unemployed parent's financial child support obligation.

court data or self-report of custodial mothers. Each of these appear likely to contain mechanisms that would cause them to be biased in the same direction, namely to underestimate the true payments. Accordingly, the present study was designed to explore child support payments in a representative sample in which all three relevant sources, noncustodial parent's reports as well as the two mentioned above, could be matched. It was found that court records could underestimate payment in at least two ways. First, judges could fail to require that Decrees contain the provision ordering support to be paid through the court. This appears to occur in about 20% of the cases. Second, notwithstanding the existence of the provision in the Decree, (since the provision is not enforced) payors might choose to pay payees directly, bypassing the court (respondents report that about 57% of the payments are made directly). Thus, court records appear to be low by at least half. Moreover, custodial parents' report of payments as a percent of what's owed is about 27% lower than their matched noncustodial parents' report.... .[7]

It is clear from the present findings, and with hindsight is fairly obvious, that asking the two divorced parents the same question should garner different responses. (Indeed the parental differences reported here have recurred in virtually every topic explored in the interview. For example, other financial issues, the extent of visitation, how involved the noncustodial parent was with the child prior to the divorce, even who performed routine infant care when the child was a baby, are all subject to massive reported differences in the predictable direction: each parent conveying that their own behavior was positive, while their ex's was negative) (citations omitted). It is a mistake to regard either of these reports, by itself as definitive. Instead, it should be recognized that each is likely to be biased, and substantially so, in a self-serving (and "ex-spouse bashing") direction.

Imagine the impact had the earlier studies queried only fathers. According to the present data, policymakers would have "learned" that only a rare minority of 4% fail to pay any child support, that over 90% of what is owed is in fact paid, and that this figure rises to 100% when fathers who experience

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[7]See also, Ray Rainville, Presentation: Child Support Technology, 3rd National Court Technology Conference, Dallas, TX, March 11-15, 1992. In a two week review period, established that at least fifty percent (50%) of fathers listed by New Jersey State Courts as delinquent by more than Fifty Thousand Dollars ($50,000), were actually cases in which the child had attained the age of majority, the jurisdiction had changed, or the order had long since been invalid for some other reason; but the orders had never been removed from the court's records.

unemployment are excluded from consideration. These figures hardly paint the portrait of a severe national problem; it is difficult to imagine that costly programs would have been voted to correct this small a "problem"....

Clearly no judge would decide a case after listening to only one of the two sides to a disagreement, but this is just what the Census Bureau researchers and policymakers did, when they believed reports from custodial parents without qualification...". (Emphasis added).

In light of Professor Braver's research, a study of joint custody based on inquires to custodial fathers and adjustments for the excessive obligations imposed during unemployment would be enlightening. Surely the 90.2% compliance acknowledged by ex-wives reported by the Census Report would then reflect a record close to 100% compliance. Clearly, if the direct expenses incurred by such parents is considered, their payments far exceed the amounts ordered by the court, a benefit for the children which is seldom considered.[8]

The statistical study by Professor Braver is perhaps best documented by the financial child support data in Oakland County, Michigan where the Michigan Friend of the Court annually reports collections exceeding almost all states and which receives numerous awards for its exemplary record of financial child support collection. Oakland County is relatively affluent and does have several innovative programs designed to minimize conflict between divorcing parents. However, the real secret to Oakland County's success lies in the emphasis placed on making sure that all payments are funnelled through the Friend of the Court. In this manner, it is able to report compliance rates of 90% with none of the enforcement measures sought by the Commission and no greater abuse of the civil rights of delinquent fathers than has become the norm in our society. Oakland County's story is this: actual child support compliance far exceeds the rates presently being asserted and where noncompliance exists, it primarily reflects financially desperate situations of the noncustodial parents.

In light of Professor Braver's insight into the Census Report, the media's reporting on "Deadbeat Dads" was extremely irresponsible. Such reports accept that mothers accurately reported the amounts received, failed to note the biased

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[8] See *e.g.* Anderson-Khleif, Susan, Divorced But Not Disastrous: How to Improve The Ties Between Single Parent Mothers, Divorced Fathers, and the Children, Prentice-Hall, 1982 pp 148-150 ("Divorced fathers who keep in touch with their children ... end up with many of the same expenses that live-in fathers have. They pay for many extras that have nothing to do with their legal child-support obligations...").

methodology for presentation and the many inadequacies in the data. The media generally accepted as axiomatic that court ordered financial child support is fair, designed to be in the best interest of children and that no excuses for noncompliance are acceptable. No member of the media exhibited the sensitivity to recognize the total desperation and disillusionment in the judicial system by fathers who have abandoned their entire lives, including family, jobs and community. This illustrates the total insensitivity to the emotional nightmare faced by parents on a daily basis across this Country as children they love and adore are torn from their arms and given to the "better" parent with the "lesser" parent left to find solace in parenting through checking account disbursements. No public outcry resulted in the popularization of a term such as "Meal Ticket Mommy" (a parent who appropriates financial child support for his or her benefit rather than applied as partial financial child support which is appropriately augmented by the recipient spouse). Are numerous fathers in our society such evil and irresponsible parents that they actually refuse to provide financial child support for their children? Alternatively, do such individuals actually reflect an indictment of a system that turns a loving and caring father into a desperate fugitive from justice with no hope and no confidence in a judicial system that views him solely as a pocketbook. Unless greater insight is applied, another generation will be left to discover the real needs of children of divorce, the need for emotional child support which requires an active, involved relationship with both parents, notwithstanding the divorce.

Since financial child support compliance by mothers is significantly worse than for fathers[9], the term "Deadbeat Dads" is as bigoted and as irresponsible as any racial epithet. Perhaps the lower compliance rates of "noncustodial" mothers indicates the primary reason for noncompliance in general, i.e. financial inability to pay and resistance to court-ordered payments when the obligation creates a financial hardship which cannot be justified by the best interest of the children. Our judicial system is extremely sympathetic (at least financially) to mothers without custody (although society often inappropriately stigmatizes such individuals) and seldom requires payment of any financial child support.

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[9]Meyer, Daniel R. and Steven Garasky, 1991, Custodial Fathers: Myths, Realities and Child Support Policy, p. 22. Office of Income Security Policy, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services. (Fathers studied in Wisconsin were less likely to receive support awards (30%) than mothers (80%), and fathers (47%) were more likely than mothers (27%) to receive no payment of amount awarded). See also, 1991 Statistics of Child Support Compliance, Office of Child Support Recovery, State of Georgia.

Whether the extent of noncompliance with financial child support orders is an indictment of obligors or an indictment of our domestic relations industry is in question, even though such issue does not appear to have been seriously considered by the Commission. The industry is doomed to failure because of its insistence on viewing "noncustodial" parents as objects for bureaucratic manipulation rather than as parents and loving participants in the lives of their children. Where is the realization that parents financially support their children out of love and not because the bureaucracy has the power to imprison them if they fail to honor their role after a divorce as an anonymous cash donor to the "custodial" parent. Fathers face a bureaucracy that ignores the expenses incurred to support their children and views their emotional child support and relationship with their own children with apathy, at best, and hostility, at worst. Where is the concern for the relationship between our nation's divorced children and their fathers. Until we view fathers as parents and treat them with the respect due all human beings, they will view child support collection agencies as the enemy and who can fault their logic? The Commission treats non-custodial parents as if they were cattle and seeks only new ways to increase cash production and improve herding techniques. The recommendations of the Majority Report merely reinforce the notion that noncustodial parents should be anonymous and complacent cash producers.

The natural parental desire to provide financial child support is best indicated by the almost universal experience of delinquent obligors who give their children expensive presents or lavish entertainment when allowed an infrequent "visit", even though facing severe sanctions for delinquent financial child support obligations. Such behavior has been referred to as the "Disneyland Dad Syndrome". Financial child support collection agencies regularly use such behavior to demonstrate ability to pay and completely fail to recognize the desperate desire to support their children when given an opportunity to insure that it will actually benefit the child and sustain the parental relationship, rather than provide financial resources to support the other parent.

The solution to virtually all compliance problems therefore seems obvious:

1) noncustodial parents should be awarded joint custody or extensive parental access;
2) custodial parents should be discouraged from moving the child(ren) away from their other parent;
3) federal programs should be critically reviewed to remove adverse impact on family formation and stability.

Although it is true that a statistical correlation does not establish causation, such blind refusal to evaluate and accept as presumptively valid, the insight provided by the Census Report, is reminiscent of R. J. Reynolds and the tobacco industry's refusal to accept the causal link between cigarette smoking and lung cancer.

Thus, JOINT CUSTODY IS THE PERFECT PANACEA for child support compliance problems! This Commission not only refused to accept this logical conclusion, but BY A TIE VOTE, with two abstentions, decided against recommending that Congress establish a successor Commission to study ways to combat the epidemic problems associated with parental access.

The Importance of Fathers in Childhood Development

Stereotypical assumptions about the disinterest of fathers has become so ingrained that the U.S. Department of Health and Human Services was actually surprised to learn that young fathers care about their children:

> "Research to date has produced a new and significant insight about the fathers of children born to teens: They typically are motivated to support their families, even when they are not married to their partners, and even though they earn disproportionately little and suffer from high unemployment".[10]

If Johnnie and Susie's welfare is dependent only on the presence of a nurturing mother and adequate financial resources, the child support compliance objectives of this Commission should ignore any adverse impact of draconian measures on noncustodial fathers. The importance of a father's involvement in his children's lives after a divorce should be evaluated solely on the dramatically improved child support compliance evidenced by data such as the recent Census Report and similar literature. However, if the dysfunction of children in single parent households can properly be attributed to the loss of one parent, the noncustodial parent's involvement in his or her children's lives should be given primary importance. Fortunately, both fathers and mothers play critical roles in child development, so Congress has an opportunity to embrace shared parenting and thereby advance compliance with child support obligations while dramatically aiding the psychological development of this nation's children of divorce.

The benefits to children from the slowly changing role of fathers as they become more involved in parenting[11], and the knowledge members of Congress should obtain before making

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[10] "The Changing Face of Child Support Enforcement: Incentives to Work With Young Parents," HHS December 1990. See also, Manhood in the Making: Cultural Concepts of Masculinity, Davis D. Gilmour, Yale University Press, 1990, p 229.

[11] In August 1990, a Los Angeles Times survey reported that 39 percent of fathers would quit their jobs to stay home with their children if that option were available to them.

recommendations on social policy in the family relations arena is presented dramatically in Kyle D. Pruett, M.D.'s book, The Nurturing Father. Dr. Pruett is a renowned child psychiatrist at Yale University. His analysis and case studies on children whose fathers were the primary caretaker during infancy are presented in a manner which is both compelling and captivating. Instead of exhibiting difficulties, the children fared as well as normally expected, and excelled in several significant areas.

Conventional wisdom, in contrast to Dr. Pruett's findings, currently reflects pervasive confusion about the proper roles of fathers after a divorce. Although the American society has accepted the feminist revolution and concepts of equality in the workplace, equal rights and responsibilities for parents are far less accepted. Moreover, many advocates for feminism support a woman's right to choose between the roles of career and mother/housewife but are unable to contemplate a similar option for men. Men are chastised repeatedly in the press for failing to assume equal responsibility for housework, but even a casual review of parent-child magazines demonstrates that modern American culture views parenting as the exclusive domain of women. Such bias is most evident in custody, visitation and child support. The empirical data inescapably demonstrates pervasive gender bias against the active parental involvement of fathers after divorce. Since much of the sexual discrimination against men is perpetuated by men and because it has become so ingrained in our culture, most people are unaware of its extent and many fail to even recognize its existence. The misfortune of personal experience or the shared experience of a close friend or family member whose life is destroyed by the discrimination institutionalized in the judicial systems of U.S. divorce courts is the primary sensitizing factor providing such insight. Each member of Congress is asked to talk to at least one divorced father and discuss his experience with the divorce industry and keep the discussion in mind when considering the proposed legislation.

Does institutionalized sexual discrimination explain the public's lack of awareness of the gender bias against men? Every divorced father believes his Constitutional rights of due process and equal protection were violated or ignored. Some express the concept as judicial bias, while others merely address their anguish and frustration when they realize that unless they were model citizens and perfect parents and their spouses are proven to be "unfit", they are not going to receive more than nominal visitation. Can all of these people be wrong? If carefully questioned, few divorced women, divorce lawyers or judges would disagree. Feminist groups, which properly attack gender bias in the workplace, are unwilling to eschew the gender bias which creates a feminist advantage in the areas of child support, custody and alimony. The Census even shows that a lower percentage of women with joint custody are below the poverty level.

The divorce courts in our country are structured to serve as a guardian and protector of women and mothers. Their success in making the public aware of this role is perhaps best illustrated by the propensity of men and women to file for a divorce. Approximately seventy-five percent of domestic relations cases are initiated by women.[12] Men are well advised to view divorce as a nightmare worse than the worst marriage could ever be, since he will likely lose any substantive relationship with his children and be "taken to the cleaners" financially. Our newspapers regularly report a father's murder-suicide when faced with divorce, yet no one ever asks what caused such absolute desperation that so many men perceive such heinous behavior as their only escape.

The pervasive "cookie cutter" approach to custody decisions results in large part from the judicial dislike of divorce proceedings which clog their dockets. Our judges correctly assumed that if the average father thought he had a chance to obtain sole or joint custody, the floodgates of litigation would be opened. Their primary concern for docket control, rather than the best interest of the child, also allows our judiciary to accept the current trend against joint custody based on inadequate supporting evidence on relitigation, over the documented studies which show the many benefits to the child's psychological development and the substantially improved child support compliance.

Judges and lawyers actively discourage litigation by convincing fathers that their chances of sole or joint custody is remote and will be extremely expensive. Accordingly, if fathers are offered more than the traditional alternate weekend and perhaps one evening on alternate weeks, they feel forced to accept the offer for fear the judge will order less, or punish them in the property settlement or alimony provisions of the judgment. Few custodial fathers seek or obtain child support, for the same reason.

Equal Protection

The Federal public policy against sexual discrimination is stated generally in the Fourteenth Amendment, as well as in many important specific areas. Thus, sexual discrimination is barred in education (15 Am Jur 2d, Civil Rights, §§ 84-92), employment (15 Am Jur 2d, Civil Rights, §§154-192), housing (15 Am Jur 2d, Civil Rights, §§477-490), public accommodations (15 Am Jur 2d, Civil Rights, §§29,43), and credit opportunity (Am Jur 2d, New Topic Service, Consumer Credit Protection, §126.5 (Supp)). Moreover, 16A Am Jur Constitutional Law at §769 states that "the trend is to strike down discrimination based on sex in many other areas, such as probate, domestic relations, sports or athletics, benefits under

[12]The Research Department of Texas Children's Rights Coalition advised that published national reports/estimates on the percentage of women who file for divorce range from 74% to 80%.

the Social Securities Act, benefits under workmen's (sic) compensation laws, retirement benefits, ..." (emphasis added and citations omitted). The most recent federal legislation regarding sexual harassment is the Civil Rights Act of 1991 which was signed by the President on November 21, 1991. The Act expressly "seeks to expand the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination." Congress found additional remedies under federal law are needed to defer unlawful harassment and intentional discrimination in the workplace." Clearly, the trend noted in Am Jur is continuing.

Classifications based on sex, like classifications based on race, alienage and national origin, are inherently suspect and must therefore be subjected to close judicial scrutiny, under the Equal Protection Clause of the Constitution, *Frontiero v. Richardson*, 411 US 677 (1973). Merely asserting that a statutory scheme discriminates against men does not protect it from such scrutiny, *Orr v. Orr*, 440 US 268 (1979). Hence, to withstand constitutional challenge under the Fourteenth Amendment, classifications involving governmental action must serve important governmental objectives and must be substantially related to achievement of those objectives, *Personnel Admr. of Massachusetts v. Feeney*, 442 US 256 (1979). Accordingly, gender-based classifications in the Massachusetts criminal code proscribing spousal or child non-support were held unconstitutional. For other cases holding state criminal statutes unconstitutional, see e.g. *Cotton v. Municipal Court for San Diego Judicial District*, 130 Cal App 601 (1976) (statute imposing criminal penalties only against fathers); *State v. Fuller*, 377 So 2d 335 (crime for husband but not wife to fail to support destitute spouse). In *Fuller*, supra, the court concluded that there was no reason to use sex as a proxy for need and also rejected the state's assertion that its objective was to rectify past employment discrimination against women which had resulted in their failure to obtain good paying jobs to support themselves.

There can be little doubt that the well established Federal public policy of the United States opposes discrimination based on gender. Even though the Federal Equal Rights Amendment was never formally adopted, its precepts are clearly incorporated into numerous state and federal statutes. Many states have adopted their own Equal Rights Amendment. Title VII of the Civil Rights Act of 1964 and the Fourteenth Amendment to the Constitution are the primary authorities which prohibit sexual discrimination. The Equal Employment Opportunity Commission ("EEOC") in its August 27, 1990 Policy Guidance based on Title VII, announced that an employer cannot establish different parental leave benefits for male and female employees without violating Title VII. Moreover, the EEOC held that a sex-based differential for child care leave (beyond the period of a medical disability) is not justified because gender is irrelevant to benefit questions and because "stereotypical characteristics" about the child care duties of working females versus working males do not provide a valid defense to clear

violations of the Civil Rights Act. The EEOC also cautioned against any attempt to circumvent the issue by facially neutral policies which result in an adverse impact on fathers. For example, plans which limit child care leave to employees with working spouses, to married employees whose income is less than half the household income, or to employees whose spouse is not also on leave are all viewed as sexually discriminatory violations of Title VII.

It is astounding that such clarity on gender bias exists in the area of employment and is completely absent in the area of domestic relations. The domestic relations industry would never withstand close judicial scrutiny of its many gender neutral policies which have known or foreseeable adverse impact based on sexual demographic characteristics of men and women.[13] Hopefully, the benefit of federal initiatives, such as the Congressional review of the recommendations of this Commission will begin to question the sexual/gender bias which pervades state custody laws and practices.

Joint Custody as a Financial Issue
For Women

The popular view of divorce is that it contributes to the impoverishment of women and children. This Commission is asked to review the Article entitled "Joint Custody, Feminism and the Dependency Dilemma" which was published in the 1986 Berkeley Women's Law Journal. The Article acknowledges the correlation between joint custody and child support compliance and asserts that joint custody offers financial opportunities to women which are otherwise unavailable to a single parent. The Article is excellent, except for the assertion at page 39 that "women and children should not have to pay for joint custody by accepting a standard of living considerably below what the parties enjoyed during the marriage." This issue confuses financial child support and alimony. In addition, an appropriate reduction in child support to reflect the child's expenses incurred directly by the

[13]For example, the "primary caretaker" theory currently in vogue as a substitute for statutory maternal preference in child custody, is first and foremost a device to maximize the number of cases in which the Court will be compelled to award sole custody to the mother. It is a warm, fuzzy word with superficial appeal. However, every definition which has been put forward or this term has systematically and purposefully counted and recounted the types of tasks mothers traditionally perform while excluding the tasks nurturing fathers typically perform. See e.g. definition by Professor Carol Bruch which gave custodial preference to the parent, "regardless of gender" who has devoted significantly greater time and effort in....breastfeeding.

father, inures to the child's benefit and is difficult to criticize.

Karen DeCrow, the past National President of NOW, in her address to the 1982 Convention of the National Congress For Men held in Detroit, Michigan made several salient points which are echoed herein during her speech she entitled "Holding a Revolution; Only Half the Participants Came", as follows:

> Men are not money machines
>
> "What is it I've been saying since the late 60's: Men are not money machines. Men are not put on this earth to support women. Women are not put on this earth to be supported. Women and children should not be lumped together to be taken care of by men....
>
> Now, the way I came to the position that men should not be money machines was not because I didn't like someone, you know, buying me furs and jewels. It was because I concluded very early in life that being a dependent is no advantage....
>
> Now, let me give some items that I hope will serve as examples. Remember the palimony case? Marvin vs. Marvin. I loved every minute of it. I thought it was high humor. It was better than Saturday Night Live by a mile....I think it is a good example of "Men-the-Money-Machine". My favorite line in the whole case, and believe me there are some good ones, was when the current wife of Lee Marvin was interviewed about her husband having to pay out all this money to his former female friend. She said, 'Why does she have to have my husband support her?' Now that is why you men who want custody aren't getting it. I mean there it is in a nutshell. It wasn't, you know, God forbid, that she should go out and work, or that she should find some other woman to support her. No! Why doesn't she find some other man. Why my husband, of all people?
>
> Who should support Michelle Triola Marvin, Lee Marvin's former live-in friend? Should it have to be Mrs. Marvin's husband or another man? ...Man A or Man B, or another nice guy living down my street? You know, maybe we could get him to do it!"

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RESPONSE TO SPECIFIC PROPOSALS BY THE COMMISSION

The following analysis takes each of the provisions recommended by the Majority Report and briefly responds to the relative merits or deficiencies with each provision. This Minority Report is edited and does not contain the specific recommendations on each item in the Majority Report because inadequate space was allowed. (Any individual desiring the full Report or authorities cited, including specific language recommended for each item addressed by the full Commission is asked to contact Phillip Holman, Esq., at 400 Renaissance Center, Suite 1900, Detroit, Michigan 48243, telephone number (313) 259-1144.)

In general, parental access should be added to each recommendation by substitution of domestic relations order whenever the recommendation contains the term "support action", or similar reference to only a portion of the court order. Little justification exists for adopting one standard for financial child support enforcement and another for parental access. For example, the Commission would only recommend full faith and credit be given to one line of the domestic relations order. Each recommendation of the Commission should be appropriately modified to apply to the entire domestic relations order with equal or greater concern and resources allocated to promoting equal parental access. Financial obligations should be imposed equally on both parents and accountability equal to or greater than the standards applicable to social security benefits received for a dependant child adopted. More importantly, cost benefit analysis should be implemented on each provision before such measures are adopted. There is no evidence that any of the recommendations will result in significant improvements in either paternity establishment or increased child support compliance. Small innovative test programs to ascertain feasibility and evaluate adverse and unintended consequences should be considered and critically evaluated.

1. Jurisdiction and Choice of Law. Excessively broad jurisdictional recommendations are recommended reflecting concern only for the custodial parent and enforcement agencies. The Commission would grant jurisdiction based solely on ability to serve the noncustodial parent in the state - such as when exercising parental access (visitation). Similarly, the mere act of acknowledging paternity with an enforcement agency or putative fathers registry within the state would confer jurisdiction. Such measures hardly encourage acknowledgement or involvement by putative fathers, nor do they reflect adequate concern for due process. Sadly, the lack of concern for fathers continues throughout the Commission's Report.

The Minority Report encourages and supports adoption of the portion of the jurisdictional recommendations of the Commission providing for the state in which the parents resided during the marriage to generally retain exclusive jurisdiction. This provision is one of the few issues raised by the Commission in which the concerns of noncustodial parents prevailed over significant efforts to prefer the custodial parent.

The removal of children from the immediate vicinity of the other parent should generally be discouraged (see SOAP). Congress is asked to seriously review the extent of the problem of interstate flight to avoid parental access in the event efforts to adopt child-state jurisdiction are renewed during Congressional deliberations. The opposition to the Commission's decision asked for the residence of the children (i.e., the residence of the custodial parent) to govern. Among the concerns with such provisions are the following:

(1) Forum shopping by the custodial parent;
(2) Bias against out-of-state absent parent; and
(3) Additional financial burden on parent who has already lost the ability to preserve the parent/child bond and need for healthy contact and generally is already required to incur additional transportation costs as the result of a decision made by the other parent.

2. Uniform Interstate Family Support Act. This Report does not support enactment of the Uniform Interstate Financial Support Act ("UIFSA"), which essentially attempts to provide the broadest possible jurisdictional base for financial child support enforcement. At the last meeting of the Commission, a decision was made to support adoption of a prior provision of UIFSA by the Uniform Laws Commission because the latest draft eliminated one broad jurisdictional provision recently held unconstitutional. This Commission is inadequately concerned about the need for constitutional due process and desires to allow child enforcement proceedings within the state of residence of the custodial parent, with no concern for the other parent. It is important to realize that the Uniform Laws Commission had no fathers' rights representative and thus had even less diversity in its membership.

3. Expansion of the Federal Parent Locate System and State Cooperative Agreements for Locate. Inappropriate intrusion into the lives of affected individuals should be considered and avoided without far greater assurance of benefit than presently exists. This Report does not otherwise take exception to the proposed expansion other than by way of questioning whether the funds would not be better spent elsewhere.

4. Locate. This Report does not take stringent exception to the substantive provisions set forth under this heading, except as otherwise set forth herein. However, with regard to Subparagraph 4(b), rather than establishing an additional roadblock or review process, such information should be automatically available to both parents in the absence of a valid and outstanding court order restricting one parent's access to the child in the form of a protective order which expressly restricts disclosure of such information by the federal and state parent locate system. Unless determined at such level, access will almost inevitably be denied in practice based on unsubstantiated allegations by the custodial parent.

5. National Reporting of New Hires. The national reporting of new hires, at least in the manner proposed, is extremely discriminatory against noncustodial parents. In light of the Braver study and SOAP, it is clear that unemployment is the primary cause for noncompliance. Accordingly, this provision may well have the unintended effect of making it more difficult for such individuals to obtain employment and thereby unable to provide financial support. Such discrimination is a major concern for individuals who have only limited employment opportunities. Finally, such individuals are more likely to be hired by smaller employers who would have to enact procedures to accommodate the additional legislation and incur the necessary costs or face the severe sanctions imposed by the proposed legislation.

At a minimum, the national reporting of new hires should apply to all divorced parents. This would aid in locating custodial parents who are in violation of parental access orders. In addition, custodial parents should be required to disclose the number of days of parental access ordered by the court on a form which contains the federal public policy to preserve the child's emotional bonds and need for healthy contact with both parents, together with available sanctions for access denial. Finally, a program the magnitude of the war on drugs, should be instituted to reverse the national crisis stemming from single parent households and parental access denial.

6. Service of Process. Proper service of process is an essential element of the Constitutional guarantee of due process. The recommendations for alternate service appear designed primarily to remove procedural protection designed to ensure actual notice to parties to a litigation. Although the Minority Report encourages simplified procedures, all such procedures should be evaluated and tested with the primary consideration given to due process and a determination of whether such notice is actually received. Any method of

service which fails to provide actual and timely notice to enable the party receiving such notice an opportunity to respond should be eliminated. For example, the recommendations for service on designated agents for military employees, including employees who are stationed outside the United States, impose no obligation on the military to forward the notice to the federal employee and, in all likelihood, would result in most proceedings being heard substantially prior to receipt of any actual notice, much less in time to prepare a response.

7. Notice to Agencies and Custodial Parents. This provision is incredibly intrusive on the private relationship between former spouses, particularly in situations which do not involve AFDC. The concept that child support enforcement agencies would be able (and implicitly encouraged) to proceed with a collection proceeding or a child support modification without actual notification to the custodial parent is extremely counter-productive. Such agencies have no way of knowing the extent of informal support being paid by such parties and whether the custodial parent has any desire to encourage the disruptive procedures inherent in a child support proceeding. The recommendation should not be enacted, except with regard to AFDC cases.

8. Statewide Uniformity. The most offensive provision of this paragraph is the recommendation that jurisdiction be transferred to the county in which the child resides. This provision should be consistent with the provision for interstate jurisdiction, namely that the county with original jurisdiction continues so long as the child or either party resides in such county. Both the Braver study and SOAP make it clear that the distance between parents and the ability to maintain regular contact is critically important to child support compliance. Governmental policy should take all actions reasonably available to discourage any reduction in parent-child contact. Relocation within a single state can involve great distances, often far greater than moving across a state line. Accordingly, reducing the cost to the parent who initiated the move should be discouraged.

9. Parentage. This Report recommends that the primary focus for paternity actions be directed towards maximizing the day-to-day involvement of the father in paternity cases. Federal assistance should not be eliminated where the parents marry and all federal assistance should be oriented towards allowing recipients to become self-sufficient and to encourage family formation.

Within a state, the venue for parentage determination should be the county of residence of the alleged parent and all federal and state agencies should take a proactive role to

encourage and maximize the bond between father and child in all paternity cases. This Report strongly supports the recommendation for nonadversarial proceedings, but suggests that each of the provisions of this section needs to clearly delineate the importance of increased parental access and educational material consistent with recommendations for decriminalization, and minimizing the adversarial nature of domestic relation and paternity proceedings and to give access priority, rather than collection. In the long run this will clearly serve to the benefit of all parents, children and federal support obligations.

10. Interstate Evidence. This recommendation goes well beyond any reasonable search requirement. It would require disclosure of proprietary business and personal information, is overly broad to address legitimate concerns and should be limited to necessary information. General access to all income information, regardless of its source, is too broad and too intrusive. Each provision should apply equally to all portions of the domestic relations order.

11. Fair Credit Reporting Act. This Report supports the Commission's recommendation.

12. Guidelines. Due to the partisan nature of the current Commission and the proposed commission, this Report cannot support this recommendation. If a successor commission is appointed, Congress should combine the issues of access and financial child support compliance and insure that any commission is nonpartisan by carefully balancing its membership between individuals who are inclined to advocate on behalf of custodial and noncustodial parents. Neutral parties with substantial contacts to both parents should be the primary constituency. Such commission should clearly delineate a minimum right of parental access in all cases (except where child abuse or neglect is established by clear and convincing evidence). Current guidelines are anti-family and have been shown ineffective in generating just and appropriate awards.

Among the more notable exceptions taken to the Majority Report is the implication in Subparagraph B(3) that the custodial parent could preclude a downward modification by opting out of any review and/or modification. Clearly, an opt-in provision with simultaneous notice to both parents is more desirable, vis-a-vis minimizing the disruptive nature of intervention. This Report suggests that as a component of any such commission, states should be required to review, evaluate and monitor the gender bias of all judges, lawyers, financial child support enforcement personnel, etc., and take appropriate educational or other remedial measures when such gender bias is implied from a statistical analysis of custody,

parental access or financial child support decisions. Affirmative action goals to rapidly eliminate gender disparity in each such area should be required in all states.

13. Duration of Support. This Report strongly objects to the duration of support beyond the age of majority. Much like the desire by many parents in intact families, a critical function of parenting involves the ability to withhold financial resources in order to encourage and motivate educational pursuits and programs deemed appropriate by the parent making such expenditures, or to encourage self-reliance. Unless our government is prepared to require that all parents provide a college education to their children, this provision violates equal protection. Where disability is involved, post-majority child support should be optional, not mandated as set forth in the Majority Report, and should apply equally to both parents.

14. Presumed Address of Obligor and Obligee. Any laws requiring notification to courts should apply to both obligors and obligees. Moreover, personal service is the best manner of notification and it is inappropriate for the federal government to mandate such an inadequate form of notification as first class mail to the address of record. This provision will predictably create many injustices. The population involved is by definition mobile, unstable and understandably views the court and child support enforcement agencies with distrust. Until adequate checks are adopted to remove the bias against noncustodial parents, the administrative convenience of federal and state agencies should not be given greater importance than the due process rights of obligors.

15. Social Security Numbers. Listing social security numbers on all domestic relations orders is already widespread, but the marriage license listing and any concern with the inherent negative implications about the likelihood of divorce should be left to each state. However, perhaps premarital agreements on custody, financial child support and parental access should be encouraged and generally enforced (unless clearly contrary to the best interest of the children involved).

16. Court Management Practices. The referenced abstract should be available for review by both parties and each given an opportunity to correct inaccurate information. This Report urges the federal government to mandate the elimination of all derogatory terms such as "visitation", "custody", etc. In addition, preferential trial settings should be granted to all domestic relations matters, rather than merely to paternity proceedings.

17. State Child Support Agencies Standards and Practices. Congress should reject as inappropriate, federal child support enforcement agencies involved in advocating for their own vested interests. It is inappropriate for a federal agency to engage in partisan activity in support of one political position. This violates federal regulations on the behavior of individuals employed by the federal government, violates state constitutional clauses against exclusive rights and privileges, and violates the Fifth and Fourteenth Amendments. Any informal administrative procedures should be carefully reviewed to avoid unfair and unjust results without adequate due process. Child support enforcement agencies have a tendency to choose simplicity over either accuracy or fairness. Such record does not comport with the grant of additional powers and responsibilities. Advocating to provide the maximum economic security is not appropriate, since the maximum economic security of the child would confiscate all income of both parents. Moreover, not all custodial parents are poor, and not all noncustodial parents are wealthy. Instead, the only allowable standard should be a determination of the appropriate and reasonable cost of child expenses, imposed on both parents based on their relative income and expenditures by each parent directly on behalf of the children. Allocation of such expenses based on the percentage of parenting is appropriate for ease of computation. (See, e.g., Michigan's Shared Economic Responsibility Formula). SOAP discloses [SOAP pg. viii] that although formulas for setting award levels increase the average amounts of award levels, they decrease compliance. Moreover, not all custodial parents are poor, and not all noncustodial parents are wealthy. Indeed, the Census Report released on January 10, 1991 found that white female heads of household have more net assets ($22,100), than white male heads of households ($16,580).

Child support enforcement agencies have adequate power and authority without establishing themselves as judicial tribunals. Similarly, such agencies should not be identified with either party, but rather enforce the order of the court. Their primary duty should be to ensure that both parents are properly complying with their obligation to support their children, including ensuring the appropriate application of funds provided to the custodial parent. Federal policy should make it clear that child support enforcement agencies owe an equal obligation to noncustodial parents and should focus an equal amount of funds and staff to addressing such concerns as parental access and accountability. Accordingly, any brochures prepared by OCSE should clearly promote involvement by both parents and should be distributed equally to both custodial and noncustodial parents.

Legal and administrative actions should be equally available to all parents and public service announcements should be equally divided between financial child support compliance and access enforcement. Any written material should clearly delineate the rights and obligations of both parents. Enforcement in child support should only occur when initiated by one of the parents in order to avoid disturbing an amicable relationship based on the then current status quo. All public relations material should avoid stereotypes and misinformation, such as: implying that noncompliance results because parents do not love their children, or are irresponsible, that nonpayment is a leading cause of poverty for children; that greater enforcement significantly reduces the taxpayers' expense; or that most custodial parents are poor while most noncustodial parents are wealthy. The reality that: "the impoverishment of women and children results primarily from never married single parent households and divorce in families with only marginal household income prior to the divorce" should be accurately reported. Finally, equal access should be given to obligors and obligees, and their counsel.

18. Direct Income Withholding. The Commission ignores the huge costs to employers of direct income withholding. Prior to implementation of this provision, adequate data on compliance for employed noncustodial parents should be critically reviewed to ascertain whether such costs are justified and offset the adverse impact on noncustodial parents. Any direct income withholding should be carefully reviewed to evaluate and eliminate the difficulties with intractable orders which prevent or delay proper adjustments. If enacted, employers should be required to adjust withholding upon request by the employee and notification to the appropriate court or agency. In the event any employer involvement is recommended or mandated, the employer should be obligated to notify the designated court upon termination of employment. In addition, standard forms should be required to be provided to the affected employee and any downward modification of child support orders should be effective as of the date of termination of employment, subject to a requirement that the employer be required to reimburse the employee for improper delay. The simplified pro se proceedings for downward modification of child support which were required under the Family Support Act of 1988, should be enforced and put into effect in all states without further delay. Child support agencies should vigorously pursue downward modifications when appropriate, with equal vigor currently applied to collection efforts.

19. Enforcement. The enforcement provisions set forth herein, such as revocations of driver's license and occupational and professional license, clearly proceed from

the false assumptions previously addressed. Since unemployment is the primary contributing factor to noncompliance, these provisions are grossly misdirected and will both diminish compliance and further alienate noncustodial parents by the criminalization of their marital and parental status. Premature access to retirement funds, notwithstanding substantial tax penalties, ignores due process and if allowed, this should only be applied to willful and flagrant violations.

Subparagraph (q) regarding the statutes of limitation should be amended to require that any back child support collected after the child attains age 18 should be paid directly to the child. The funds were ordered by the court to be used on behalf of the child and if never received, could never have been spent by the custodial parent. Payments to the custodial parent are not in the best interest of the adult children of divorce.

Enforcement of financial child support is already the most burdensome form of debt collection in the United States. Our tax revenues guarantee that the debtor's wages will be garnished, tax refunds will be intercepted, liens will be placed on property and that delinquent obligors will be placed in the only form of debtors prison allowed to survive in the United States. Despite the multitude of enforcement devices already available, many contend that compliance remains unsatisfactory. The time has come to ask the question "why?". Can Congress reasonably enact the proposed legislation until someone collects data regarding the number of delinquent obligors who are only marginally employed, unemployed, disabled, dead, in jail, supporting second families, or refusing to pay as a form of civil disobedience because they have been unable to see their children.

20. Federal Employees and Benefit Recipients. This provision clearly misunderstands the dire straits of noncustodial parents receiving disability payments. Such means tested receipts should be excluded from income unless dramatically beyond the level necessary for subsistence.

21. Criminal Nonsupport. This provision is inconsistent with any desire to decriminalize and reduce the adversary nature of domestic relations proceedings. As such, it can only serve to increase the conflict and exacerbate the existing problems. If criminalization is sought, denial of parental access should result in equal or greater sanctions and enforcement by all courts and governmental agencies.

22. Health-care Support. Thirty-five million Americans do not have health insurance. Making health insurance mandatory for parents after divorce shows inadequate insight

into the economic realities of the individuals affected. Health care provided to employees without additional cost should always be given priority without regard to the parent for whom such benefits are available. Although additional insurance coverage is beneficial, current financial support obligations already exceed the financial ability of many parents. Any amount required to be spent should clearly reduce the obligations presently being imposed by states with excessive formulas or which do not give adequate consideration to the income of the custodial parent or the expenses incurred by the noncustodial parent in connection with his or her parental access. Such expenditures by the noncustodial parent often exceed the amount of child support ordered by the court, particularly in the case of the most involved parents whose efforts should be applauded rather than hindered by creating inappropriate financial roadblocks. Any requirement for W-4 disclosure should apply equally to the obligee.

23. Young Parents. Federal programs should encourage family formation, shared parenting, joint responsibility by both the custodial and noncustodial parent for financial and emotional child support of their children, especially in paternity cases. The current insensitivity to fathers by enforcement agencies incident to implementing the Family Support Act of 1988 have doubled the percentage of fathers who abandon federal programs from under 30% to over 60% in two years.

24. Indian Children and Tribal Courts. Due to the Commission member's professional conflict in connection with his employment, no position is taken on this provision.

25. International Cases. Full reciprocity is supported.

26. Interstate Compacts. Cost benefit analysis is required.

27. Bankruptcy. Child support obligations should be excluded from discharge in bankruptcy only where willful misconduct is clearly established. Current policies falsely presume improper motive and do not allow discharge in bankruptcy. Loss of the fresh start allowed by bankruptcy creates only desperation and eliminates any employment incentive.

28. Collection and Distribution of Support. Prior state experience shows that credit card authorization is irrelevant, since noncompliance generally involves parents without adequate credit to obtain credit cards. Similarly, delinquent obligors have inadequate funds in bank accounts to pay the amounts involved. Delinquent obligors simply do not have

sufficient assets to meet their financial obligations. The attempt to overwhelm obligors with the enormity of the cost of federal programs is unconscionable and appears designed to hide the true cost of the proposals. Benefits collected should be paid first to children with adequate standards of accountability applicable to both parents.

29. Funding and Incentives for Child Support Agencies. All funding incentives should be eliminated due to the inherent tendency to alienate public employees from noncustodial parents and to encourage inappropriate collection measures.

30. Placement and Role of the Federal Child Support Agency. A complete reorganization of federal child support agencies is encouraged, with the primary importance given to a focus of the best interests of children, rather than the partisan collection efforts presently given priority. The partisan nature of the proposed commission would dictate inappropriate and partisan recommendations. Until the current recommendations are critically reviewed and revised, this Report cannot support the Commission's proposal.

31. National Advisory Committee for Child Support. Any advisory committee should have an equal voice from custodial and noncustodial parents, with financial child support agencies deemed to be representing custodial parents, absent substantial change in current practices. Any budget for the advisory committee should clearly delineate equal funding of concerns of custodial and noncustodial parents.

32. Training. All programs should equally apply to parental access and federal expenditures should be evaluated based on reliable data and a properly applied cost benefit analysis.

33. Audits. Federal funds should be tied to compliance with parental access objectives and whether child support orders are immediately reduced for unemployment.

34. Interstate Data Collection. Data collection as set forth herein is recommended.

35. Child Support Assurance. Unintended consequences of legislation such as AFDC which discourage family formation and encourage disintegration should be carefully evaluated.

36. Children's Trust Fund. Any such fund should be equally distributed to access enforcement and financial child support.

37. Future Commissions. Any such commission should give parental access highest priority and should be carefully evaluated for partisan membership. The federal role in post-divorce should be primarily devoted to the best interests of children. Measures to correct prior abuses of the federal and state programs which have contributed to the national crisis of single parent households should be given priority. Promoting the involvement of both parents in the financial and emotional support of their children before, during and after divorce should be the primary concern.

38. Federal Role in Enforcement. The primary role of the federal government should be to eliminate the present gender bias of existing courts, enforcement agencies, state and federal programs, etc. which were intended to benefit children and have the unintended effect of alienating noncustodial parents and reducing their involvement in their children's lives, contribute to family disintegration and/or discourage family formation.

Absent the restoration of the fundamental importance of both parents and sensitivity to preserving the child's emotional bonds and healthy contact with both parents, the future of children in our society will continue to portend disfunction and despair. Hope for substantial and beneficial improvement in the quality of life for our progeny lies in the changing of the American credo from "the flag, motherhood, and apple pie" to "the flag, motherhood, and fatherhood."

Thank you for your time and consideration.

Sincerely,

Don A. Chavez, MSW, L.I.S.W.
Member U. S. Commission on Interstate Child Support

DAC/(pjh)

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1) Phillip J. Holman, Esq., Director of the National Congress for Men and Children, Detroit, MI (Editor and coordinator of suggestions from other father's rights groups)
2) Roger Gay, M.S., Lewisville, Texas
3) Research Department, Texas Children's Rights Coalition
4) Ron Henry, Esq., Baker & Botts, Washington, DC office

Mrs. SCHROEDER. Thank you very much.

Mr. Levy.

Mr. LEVY. Good afternoon. Our Children's Rights Council is an active national group committed to the ideal of healing America's families.

I would just like to briefly introduce our college student interns for this summer—Angel Ongcapin, Boston College; Beth Applebaum, Santa Clara Law School, Sharon Sieber, University of Miami; Sharon Meth, graduate of the University of Pennsylvania; Stephanie Wilson, Connecticut College, Carrie Ann Smith, University of California; Kathy Van Voorhees, Washington University in St. Louis.

Mrs. SCHROEDER. Welcome. We are glad to have you here.

Mr. LEVY. I hope all of them—some may have had to go.

We have chapters in about 30 States. About half our State coordinators are women. They include Chris Klein, our coordinator in Florida, author of the book "For the Sake of the Children;" Patricia Galen, a grandmother and schoolteacher in California and our coordinator in Pennsylvania; Katherine Gibson, author of a well known American Bar Association article entitled "Not Mothers' Rights nor Fathers' Rights but Children's Rights."

About half of our advisers are women. Our advisers include Dear Abby, Senator Dennis DeConcini, Vickie Lansky, Elisabeth Kubler-Ross, Karen DeCrow, and Michigan gubernatorial candidate Debbie Stabenow.

We believe that our Children's Rights Council is the most pro-child support group in the country because, based upon the data and the research, the most successful programs and ways to collect. We also believe that we have very sensible approaches to preventing long-term abuse. I have a 9-year-old daughter and a 17-year-old son. I am very interested in preventing abuse. I don't want to see those kids hurt or other kids hurt.

We have been saying for 9 or 10 years since we began in 1985 that we must look in terms of preventing abuse to family structure, and we are glad that Judge Smith in a big Journal article in 1988 was the first national study to look at family structure—how are people raised, who is raising them—and others are starting to pick up on family structure. It hasn't percolated into Federal policy yet, but it is probably going to have to at some point.

As to H.R. 3694, we have nothing against garnishment. Everybody wants to try to collect on an award that they have won. We would merely state that in addition to the real abuse charges we have got to look at false abuse. There was a half million dollars award given to a former winery executive in California, Gary Ramona. He successfully sued two therapists and a hospital for falsely implanting abuse allegations in his daughter's mind. She was an adult. The charges broke up the family; he lost his job. A jury found those were false allegations. He has a half-million-dollar award.

Now shouldn't we put false allegations, the ability to collect against pension funds, in this kind of bill to balance it?

The State of Texas has found that false allegations are so serious and detracting from the ability of staff in Texas to handle real abuse charges, the State of Texas is now prosecuting false abuse

charges in order to free up the staff to help the kids who really need help.

And why not any tort? As we know in the law, why stop just with one type? Why not any award, any tort, including those few States who take visitation seriously, interference with visitation, those few States, those few judges who will give an award of money for interference with visitation? We prefer makeup and nonmoney provisions, but if a judge does order a money award, why not allow that in the bill, balance for kids? Kids need balance, legislation needs balance to send the right signal to kids.

As to H.R. 4570, one of its provisions would prohibit Federal employment. With all due respect, this would be the ultimate absurdity, to prevent employment because they owe. Well, if they don't get a job, how are they going to pay unless there is also a provision that they have a payment plan in advance? They could perhaps get the job. But how can you get a payment plan if you don't work?

The 3 days or 10 days requirements, I don't know if they are realistic time frames. What about defenses? What if a child has been kidnapped by the other parent, whereabouts unknown, there is no court order prohibiting the other parent from seeing that child but the arrearages are building up?

The stamp tax and the tea tax were seen as oppressive in Revolutionary America, but they only involved taxes. Taxes are as nothing as compared to our children and our access and loving support for them, and that access has been virtually ignored in America at enormous peril to child support and to the well-being of kids.

For 40 years we have passed increasingly tough measures on child support. Each time we are told this new step is going to do it. The latest is, the Maine licensing is going to do it. If any of these did it in the overall picture, go for it, pass all you like. Congress has been passing them increasingly for 40 years.

As I say, we are the most pro-child support group in the country, but what have we got for what has gone ahead of us now based on a different philosophy? The child support system has been called an expensive disappointment in a 1992 report by Congress Members Shaw, Johnson, and Grandy. It has been called a disaster by Paula Roberts of the Center of Law and Social Policy, Associated Press, in May 19, 1994, in which I was quoted. It has been called a problem that we try to fix every 4 years said Representative Marge Roukema in comments to me.

There has already been a reference to that 1992 General Accounting Office report that said 66 percent of the mothers with a child support order report the main reason they can't collect is the fathers are too poor. What is the significance of this? Have we looked into this? The General Accounting Office says that up to 28 percent of child support obligors are either living with their exspouses or they are deceased, the ultimate deadbeat. These are just a few examples of the very poor data collection in this area.

When I talked to Elizabeth Hickey the other day, who is the head of Utah's Mandatory Parenting Education Program, and I told her I was going to testify before the committee and the child support bill has nothing in it about mediation, incentives for States to enforce fair custody and access determinations or access enforce-

ment, she said it would be very helpful for the bill to incorporate the research of such people as Sanford Braver.

Sanford Braver of Arizona State University has found that the greatest incentive and measure of financial child support compliance is the activity, the involvement, of a parent in a child's life. I, David Levy, my son is going to college in September. The child support order ended, has already ended. I, of course, am going to help send my son to college. Why not? I have been involved in his life since birth except for 1 year of spat about 13 years ago, and since then his mother and I have cooperated in his upbringing. I have been part of his life. I haven't had to expend tens of thousands on visitation battles for the past 10 years. I haven't had a child who has been hidden for the past 5 years. I have been involved in his life, in his schooling. Of course I am going to pay. Who wouldn't?

Very few parents who are involved in their children's lives would not have that good sense, and if they don't have that good sense, help us to reach them. Help us to bring those parents out.

Another survey has shown that parents with joint custody, which is shared parenting, a nicer, fuzzier term, and access, pay twice as much support as parents without visitation and custody, yet this same 1992 Census Bureau survey shows that 37 percent of fathers had neither access nor joint custody of their children, 37 percent, no access whatsoever. That is higher than the 25 percent of mothers with a child support order who get no money. We have got to reach out to both groups to pull them in, but to do that we need incentives, we need balanced legislation.

The Parents Fair Share Program, the Federal program, has achieved 90 percent support compliance in nine States by providing education, job training, and parenting for parents whose children are on welfare. The program ensures that parents maintain contact with their children during the running of the program. The cost of the program, only $1,400 per participant. That was mentioned in a U.S.A. Today article that I had in U.S.A. Today on June 17.

Vice President Gore met with a number of people in Nashville yesterday. Some of our people were down there. They report that there is now a beginning to understand the need to reach out and involve fathers in their family, and I might say that the two million noncustodial mothers—two million noncustodial mothers in this country and millions of grandparents need to be more inclusive. They didn't know quite yesterday, most of them, how to do the reaching out, but I commend Vice President Gore and the others there yesterday for at least finally addressing the question.

They are addressing the question more in the White House now and at HHS where our Children's Rights Council have also met. They are starting to understand the dynamics that we have got to reach out and include all family members. Carrot, not just sticks; incentives, not just jail.

When we start to move in that direction, and how would we tell Vice President Gore and the others and all of you to do that? Wherever you see a bill like this, these bills, put in one thing, something for the access, the mediation, the parenting, the fair share; start balancing the bills. It is incremental, it is not overnight, a little piece at a time.

Senator Moynihan warned 30 years ago what was going to happen with the systematic exclusion, forcing away, shoving away of fathers in this country. We have now resulted in that, and our families are in great danger, many cities are in danger. We have got to start building back up a little piece at a time to prevent the abuse, get the support paid, get the parenting on a regular course in this country.

Thank you.

[The prepared statement of Mr. Levy follows:]

PREPARED STATEMENT OF DAVID L. LEVY, PRESIDENT, CHILDREN'S RIGHTS COUNCIL

Our Children's Rights Council is a national nonprofit organization, committed to the ideal of healing America's children, through stronger families. We hold annual national conferences, publish a quarterly newsletter entitled "Speak Out For Children," publish a Parenting directory, a Catalog of Resources, evaluate research, and make referrals. I am editor of the 1993 book entitled "The Best Parent is Both Parents."

Two national organizations are affiliated with CRC—the Stepfamily Association of America, and Mothers Without Custody. Kids Express, a monthly newsletter for and about kids published in Littleton, Colorado, is also affiliated with CRC. We have chapters in more than 30 states. About half of our state coordinators, members, and advisors are women.

We have concerns about H.R. 3694, the Child Abuse Accountability Act, and H.R. 4570, the Child Support Responsibility Act.

H.R. 3694 would allow garnishment of pensions for court ordered child abuse payments. Why such a highly selective approach? The example cited in Congresswoman Schroeder's March 28, 1994 press release is of an incidence of child abuse that occurred 30 years ago, for which there was a jury award of $2.3 million, which the federal government refused to deduct from a father's federal pension.

We are sure you are aware of the increasing number of false abuse charges. Indeed, a former California winery executive was recently awarded $500,000 by a jury against two therapists and a hospital whom the jury found had falsely planted memories of child abuse in a woman's mind many years after the incidents supposedly took place. The executive, Gary Ramona, said the charges had destroyed his family and cost him his $400,000 a year job. Judgments for false abuse charges should also be in any bill you consider.

False charges create secondary victims like Mr. Ramona and his child, and deprive authorities of the resources necessary to combat real abuse, as the state of Texas has decided, in deciding to prosecute false abuse charges on the state level.

We also recommend a provision for proceeding against pension funds for interference with visitation. Congress, courts and states legislatures generally ignore parenting after divorce, but some states are starting to understand the connection between parenting, healthy families, jobs, and higher financial support payments, so in those cases where fines are assessed for interference with custody or visitation, we suggest you include it in your bill. Why should a bill single out only certain torts for recovery from federal pension plans? Why not any court order?

H.R. 4570, Sec. 401, requires employer compliance within 3 days of a wage withholding order and a fine of $1,000 after 10 days; Sec. 414, attachment of retirement plans without the requirement of a separate court order; and 422(a) denial of federal benefits, loans, guarantees and federal government employment with child support arrearages.

This latter provision, to prohibit employment of someone who owes child support, is an example of the absurdity to which our child support policy has taken us. You owe child support? We won't give you a job, because then you might be able to pay the support. However, we will look kindly upon you if you have a payment plan in advance. But how can you have a payment plan if you don't have a job?

For Sec. 401, are three days or ten days realistic requirements? What about defenses? What if a child has been kidnapped by the other parent, whereabouts unknown, no court order prohibiting the other parent from access to the child, but an arrearage is building up? The Stamp Tax and the Tea Tax were seen as oppressive in Revolutionary America, but they only involved taxes. Taxes are as nothing compared to our children, and our access and loving support for them.

For forty years we have passed increasingly tough child support measures, and what do we have to show for it? The child support system has been called—

"an expensive disappointment" in a 1992 report by Congressmembers Shaw, Johnson and Grandy,

"a disaster"—Paula Roberts, of the Center on Law and Social Policy, associated Press, May 19, 1994, and

a problem that requires us to try fix every four years—Rep. Marge Roukema (R–NJ) in comments to me.

A 1992 General Accounting Office report provided to House members Roukema and Kennelly and Senator Bradley showed that 66 percent of mothers *with a child support order* declined to try to collect because the father was too poor.

The General Accounting Office has also learned that up to 28 percent of child support obligors are either living with their ex-spouses, or deceased (the ultimate deadbeat). These are just a very examples of the very poor data known to exist in the child support area, and the almost total lack of knowledge of non-custodial parents and their children.

When I talked to a woman who is a leader in parenting education recently, and explained that I was going to testify before a Congressional committee, and the child support bill had nothing in it about mediation, incentives for states to enforce fair custody and access determinations, or access enforcement, she said that it would be important for the bill to incorporate the research of Sanford Braver, Ph.D.

Dr. Braver of Arizona State University has found that the greatest factor in determining child support compliance is the participation the parent has in the child's life.

And in case you think this finding has no relationship to the enforcement provisions of H.R. 4570, I ask you to consider, as Thomas Paine did, in his famous tracts in 1776, of what continual denial of fundamental liberty interests does to people—and what the denial of children's and families needs is doing to hurt children and families in this country today.

A 1992 Census Bureau report showed that fathers with either joint custody or access to their children pay up to twice as much in financial support as fathers with neither joint custody nor access. Yet a whopping 37 percent of fathers had no access at all to their children, which is higher than the 25 percent of mothers with a child support order who receive nothing in support. If the Census Bureau polled mothers with joint custody or access, they would probably find similar figures.

We ask you to help us get those 37 percent of parents more involved, because children need parenting as much as they need money. And what's even better, if the parents are around, their wallets will be around, too. Help us to bring this about.

There are about 60 bills in Congress which attempt to deal with financial child support. And like H.R. 4570, they say nothing about parenting, mediation, visitation, fairness of custody decisions, job incentives, or job training.

Yet the Parents Fair Share Program achieved 90 percent support compliance in nine states by providing education, job training and parenting for parents whose children ae on welfare. The Program ensures that parents maintain contact with their children during the running of the program. The cost of the program: $1,400 per participant.

We invite you to come to the Children's Rights Council office someday, and listen to the phone calls from the distraught fathers, mothers and grandparents, who have spent thousands of dollars fighting for access to their children and their grandchildren.

Child advocate Susan DeConcini said at a recent CRC conference that parents should not have to fight to maintain a relationship with their children, but she knows that far too many parents must indeed wage such fights.

Unfair custody decrees, ignoring of access rights, and the legislation that treats non-custodial parents as mere cash cows, without acknowledging a child's right to be loved and cared for by both parents, is why we say there aren't as many absent parents in America as there are pushed away and shoved-away parents.

When parents are around, so are their wallets. And their presence is not only measured by money. They are around to be loving, involved parents.

Our CRC proposals will bring in more child support than any other proposals before you. That is why we say we are the most pro child support group in the country.

We ask that you take into account our views, based on the best available research to date, before proceeding futher. Thank you.

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—Allen H. Neuharth
Founder, Sept. 15, 1982

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Stop forcing parents away

OPPOSING VIEW **Kids need more than money; respect for both parents' rights will get money and more.**

By David L. Levy

Everyone knows America needs welfare reform; what is not so well known is that we also need financial child-support reform for the same reason: The government must stop breaking up families.

Welfare breaks up families because it pays people to not work and not marry. The financial child-support system also breaks up families. It assumes children need only financial support, not full parental support. This pushes divorced parents away from their own children. Such ludicrous treatment of parents as no more than cash cows doesn't work any more than the welfare system works.

Instead of continuing to concentrate on the money-only approach that pushes parent-deprived kids into crime, drugs and suicide, the government should embrace proven, low-cost, pro-family approaches that will help children.

Consider: The Census Bureau says the 8% of divorced fathers with joint custody/shared parenting pay 90.2% of their support, the 55% with access/visitation pay 79.1% of their support, and the 37% with neither shared parenting nor access pay only 44.5% of their support.

The answer? More access — and for the 2 million mothers without custody, too!

Stop forcing parents and grandparents away from their children and grandchildren. Stop making custody and access battles lucrative for my fellow lawyers. Substitute mediation for the adversarial process and start taking denial of access seriously.

Fathers will be more receptive to signing paternity forms at hospitals if the forms lay the groundwork for a custody or parenting-time arrangement. Vermont is working on this; the White House has the forms.

Sixty-six percent of mothers with child-support orders say they don't try to collect because the fathers are poor, according to a General Accounting Office report. But the Parents Fair Share Program achieved 90% support compliance in nine states by providing education, job training and parenting skills for parents whose children are on welfare. The cost: $1,400 per participant.

Meanwhile, bear in mind, government data used in the child-support debate are clearly unreliable, even counting deceased fathers as deadbeats, with a $260 million error in a 1994 report to Congress.

President Clinton has said that if you get the values wrong, you get the policies wrong. For all parents and all children, let's get the values right.

David L. Levy is a Washington lawyer and president of the Children's Rights Council.

Mrs. SCHROEDER. Well, we thank both of you, and we appreciate your hanging in to testify.

I assume you don't have any problem then with the collection of abuse judgments. I understand what you are saying about there could be false abuse, there could be all sorts of things, but that is what the courts are to do, not us, and once there is a judgment, then you ought to be enforcing that judgment. So you don't have any problem with that, right?

Mr. LEVY. No, Congresswoman Schroeder, as long as your bill would include garnishment, enforcement of both, false abuse as well as real. We would have a problem with just one-half of it, yes. Then we would say it is not a balanced due process bill.

Mrs. SCHROEDER. I see. But as I say, we have not had any cases come forward showing that there was a false abuse judgment against a child that they wanted to go after.

Anyway, I think the courts are where you prove those, and when you have a judgment, we are not supposed to peel away that judgment and go into that. You do that in the court forum.

Mr. LEVY. Oh, no, excuse me. If I am not making myself clear, I apologize. No. I just mean this provides for enforcement—this provides for pension collection for real abuse, right? All I am saying is, just allow that pension for the false. That is all I am saying. The courts have just started to recognize false abuse charges.

Mrs. SCHROEDER. What I am trying to say is, you don't open it up for absolutely everything until you have cases to move on it. It is one step at a time, and this is a case where we are aware of cases that have been, I think, justice denied by not being able to get your judgment enforced.

The false abuse is usually the parent against the child, and the child is not getting a pension. So it doesn't seem to make sense in that context where it does make sense in this context, and that is why we are doing it.

But I also wanted to ask you a bit about the child support. I really think there is a lot more similarity than you seem to think, both of you seem to think, or I am missing something. As I see the Federal Government's role, we cannot make children emotionally whole during a divorce. Obviously, there is no law in the world we or the States or the local government or anyone else can do, but the attempt to make them as financially as whole as possible when you split two households, which is very difficult, we ought to make that as automatic and as easy and as quick as possible, and when you look at car payments versus child support payments, you have got to admit, we have not done that.

So this is basically only to make that as easy and as fast forwarding as possible once the court has determined the child support amount.

Now it seems to me that if there are many parents who got an unjust court order that they can't afford, they ought to go back into the court and have it changed because courts, as far as I know, in every State retain jurisdiction, and a change of circumstances is a reason to change that court order, and I don't think you would be saying we ought to start running family law from the Federal level.

We, again, are only saying that once a judgment is out there, we ought to make it enforceable in the easiest possible manner, so it

is like an automatic payment, as they do when you have a judgment on a car payment, it gets paid.

I think most of the things you are talking about maybe you want to talk about at the State level or somewhere, but I don't think anybody is recommending we make family law at the Federal level. This is what we can do in this very diverse country with all these different geographical obstacles and all sorts of things people can hide behind: What can we do to make the enforcement of those child support orders easy?

Mr. MILLER. If I may, the Family Support Act of 1988 does give Federal authority to address visitation issues. As a matter of fact, it is clearly in there. It is the one issue that the Government has chosen to totally ignore and concentrate on the financial issues, and I understand that, because money is much more tangible to measure. How do you measure the emotional value?

One thing that is very clear, that almost all of our entitlement programs are driven by absent father syndrome. We need to start addressing that issue if we are going to have any true reform, any true child support, and in families where there is a father who has joint custody of the child after divorce or separation, there is 90.2 percent child support compliance. It is the most cost-effective, economical means of financial child support enforcement.

But you have to look at the bigger picture. The majority of people who are incarcerated come from absent father homes; 86 percent of rapists come from absent father homes.

Mrs. SCHROEDER. I understand that, and I am certainly—the Federal Government is doing everything they can to try and begin to solve that with welfare reform and so forth.

You are not proposing that we put together Federal family law courts, are you?

Mr. MILLER. No.

Mrs. SCHROEDER. OK. So all we can do is deal with orders that come from State courts, and our role is to make sure the Federal Government honors those, and then your proposals really belong at the State court level.

Mr. MILLER. Not necessarily. What you are doing, you are telling the States how they are to administer one aspect of a family court order.

Mrs. SCHROEDER. Collection.

Mr. MILLER. Money, yes. You are not addressing how they should address the other issues that that same court is going to hear.

The court order basically has two parts—well, three parts, equitable distribution. You have got the family structure, the financial structure. You have two parents now and typically only one parent who has to support two homes. We are talking about financial survivability. It is not in the child's best interest to financially destroy one of these children's parents, and that unfortunately is what usually occurs. As one of my friends called the child support enforcement agency, the maternal revenue service, rather coyly, but unfortunately what has happened is, most of these fathers, if they do not have the wherewithal to retain counsel, are unaware of their rights and privileges under the law, they don't know that when they have been hurt and they are in the hospital that they need to hire an outside attorney to go into court for them and get their child sup-

port stopped because they are unable to go to work. They may be in a coma, they can't stop that child support from accruing. While they are in prison, they can't stop that child support from accruing. There are a lot of reasons.

Mrs. SCHROEDER. I realize you were criticizing the act because it said that you could not get employed if you had back child support unless you came up with a plan, and the plan would be how you get rid of that back child support by paying so much a month. I don't understand how that is unfair. How is that unfair?

Mr. LEVY. Thank you. If I may back up, with that Gary Ramona false case, those are all now adults. He won against a hospital. That hospital may receive Federal funds. There may be a real way to collect on pensions of the administrator if they are personally liable, going back to balancing the accountability.

On the child support, actually the Federal Government does enter a lot of family law, adoption, abuse, neglect, poverty, a lot of things. The Federal Government really directs what the States are to do and how to do it. Even now in Federal law who can have access to the Federal locator service? The term "absent parent." What happens across State lines. The Federal Government gets into a lot of access and visitation right now. It doesn't set up the original order, but the enforcement has been taken over by the Federal Government in a lot of cases, and the Family Support Act of 1988 that Mr. Miller mentioned, it is in there too, congressional resolutions on custody.

Mrs. SCHROEDER. But you just hit the operative word, and that is "enforcement."

Mr. LEVY. Right.

Mrs. SCHROEDER. We are trying to find interstate enforcement, but the generation of the order, the modification of the order, the direction of the order, I think we all want to remain at the State level, right?

Mr. LEVY. Oh, yes, with support too. With support too, yes. We are only talking about enforcement.

The main reason why the Federal Government has taken over financial child support is based on poverty, the general welfare, the preamble to the Constitution. What we are saying is that——

Mrs. SCHROEDER. It is also because of the interstate consequences of people moving over State lines.

Look, we had the same thing with automobiles, if I may go back.

Mr. LEVY. Sure.

Mrs. SCHROEDER. People used to be able to move across the State line and then claim, well, the commercial paper was different in that State, and at that point the Government came in with what we call the UCC, the Uniform Commercial Credit Act, which says you can't do that; no matter where you bought it, you are going to pay for it no matter where you move to; and that is really all we are trying to do here, is get as close to the UCC as possible, and the UCC works so efficiently. Only 3 percent of car payments aren't made, whereas a very high percentage of child support payments aren't made.

So all the fights about whether you got the right car, or the car was a lemon, you keep that in the court, but once there is a judgment, there is a way to enforce it across State lines, and that is

all we are really trying to do here. So I think maybe some of the things that you are talking about go to the courts that are administering it, but I don't think you want—I mean there is no way for the Federal Government, once it sees a judgment to say, "Oh, well, this judgment is for too much," or whatever. You would have to have a whole court system to monitor that, and I don't think anybody is proposing we create that.

Mr. LEVY. I perhaps am not making myself clear. Pardon me. The Federal Government does not set the limit of support right now in a State.

Mrs. SCHROEDER. That is right.

Mr. LEVY. It does not set how much custody or access, and we are not proposing they do so. We are talking about something totally different.

Mrs. SCHROEDER. You are talking about welfare.

Mr. LEVY. We are talking about welfare, we are talking about enforcement, interstate issues, and the areas in which the Federal Government already has policy; for example, the Federal Government in the Social Security Act.

Mrs. SCHROEDER. But we are talking about welfare prevention by trying to collect child support where there is an order and an order due and make that as efficient as possible. I mean we are trying to decouple this from welfare.

Mr. LEVY. And I'm sure you know that despite 40 years of child support orders poverty has been reduced only 0.2 percent.

Mrs. SCHROEDER. Part of it is because we have not had anything that is the equivalent of the UCC vis-a-vis child support orders.

Mr. LEVY. We would submit, based on research, it is because we have been induced shoved away and forced away parents by an imbalanced Federal policy, and the White House and HHS are beginning to understand this, and Vice President Gore at yesterday's meeting, they are beginning to slowly, dimly, get aware that unless we start Federal policy in the areas the Federal Government is already involved, such as the parents fair share demonstration program, that involves visitation, they make sure you get to see your kids—if we have more of that, if we can remove the word "absent parent" from Federal law, if we can open up the Federal parent locator service to all parents except those with TRO, this is where the Federal Government has already entered the arena and where it has entered into an enormous imbalance, and the imbalance is hurting kids.

I have talked to your constituents, Congresswoman Schroeder, and they know that you want this to work, but unless we start putting kids first in terms of balance, in balance, it is not going to work 5 years from now.

Mrs. SCHROEDER. Federally though, we have been putting cars first and kids last. Kids are in terrible shape, and all we are trying to say—and I am going to defer back to the chair because I really do have to run, I am way, way, way beyond my time limit—but all we are trying to say here is we ought to move these judgments the way we move the car judgments, and I don't think you want to Federalize all of that at this level because we have always felt that especially family law is done much better by the States locally on visitation rights, on custody rights, on all of those things. But the

final order we ought to do everything we can to make work, and that is basically where we are.

Thank you very much, Congresswoman Norton. I think we are pretty much done if you want to close it out.

Mr. LEVY. If I may just say about the car, David Elwood of the White House—when I testified before the Federal welfare reform working group, David Elwood asked me last fall, "What about car payments?" and I said, "I'm glad you asked me, sir, because that is a perfect example. When you make a car payment, you have the car. When you make a mortgage payment, you live in the house. When you pay child support, where is the child?"

Mrs. SCHROEDER. But the answer to that is still—before, people used to say, "Yes, but this isn't the car I wanted, and this car is a lemon," and the court said, "Fine, you have the right to paint lemons all over the car, you have the right to go back into the court and prove that, but as long as there is a judgment there is a judgment," and so it is very analogous, I think, to the car in that if you can't get visitation, go back into the court, it retains jurisdiction in that. But the judgment is not where you challenge that.

Mr. LEVY. I agree the judgment is not, it is the enforcement, the support enforcement, the enforcement across State lines——

Ms. NORTON [presiding]. I'm going to interrupt before the gentlelady leaves just to say thank you heaps. She thought she was sitting in for me for a few minutes, and she has been here for an hour and a half I'm sure. I just want to thank her as she goes and not to keep her.

Mrs. SCHROEDER. Thank you.

Ms. NORTON. And may I apologize to Mr. Miller and Mr. Levy and to the witnesses that came before them. Only a real emergency, in this case the District of Columbia appropriations itself, which has been in some jeopardy, could have torn me from a hearing which I scheduled today precisely because of its priority, putting it on the very first day at the very first possible time when we came back.

So I regret that I have not been able to hear all this testimony. I have read the testimony, however, of you and those who preceded you, and I want you both to know that I understand your respective positions. You perhaps could tell if you were here by the position I took that we believe that this is an issue whose time is overdue. We will, however, study your testimony and the testimony of those who have gone before to see if any changes should be made in this legislation. I particularly want to thank you for testifying in my absence and for staying so long as this hearing, after all, has gone on since 10:30 this morning. Thank you both very much.

Mr. MILLER. Thank you.

Mr. LEVY. Thank you.

Ms. NORTON. The hearing is adjourned.

[Whereupon, at 2:05 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

TESTIMONY OF ATTORNEY LISA BLOOM

I am a Los Angeles attorney and an associate in the law firm of Allred, Maroko and Goldberg. I represent a large number of child and adult survivors of child sexual abuse in civil cases. I believe that I have had one of the largest dockets of child sexual abuse cases of any civil attorney in the last few years. I am also very familiar

with the literature regarding repressed memory of childhood trauma. I have reviewed the testimony of David Levy in reference to the Child Abuse Accountability Act, and I want to correct the record with regard to the "false memory" case to which he refers.

While Gary Ramona did prevail on his claims against Holly Ramon's therapists in a recent Northern California jury verdict, that verdict was by no means a ringing endorsement for supporters of the so-called "False Memory Syndrome." (In fact, there is no scientific or psychological syndrome called False Memory Syndrome; this title was created by a political group comprised of people accused by their children of sexual abuse).

While the jury in Mr. Ramona's case found that the therapists were negligent, they made clear in post-verdict interviews that they did *not* reach a conclusion one way or another regarding whether or not Holly Ramona was in fact sexually abused. In fact, Holly Ramona has sued her father for sexual abuse several years ago, and *her* case has not yet gone to trial. Holly was not a party to the case in which her father sued her therapists, and she has not yet had a chance to try her claims against her father. My law firm now represents Holly Ramona in that child sexual abuse case, and we look forward to ensuring that Holly has her day in court.

In short, while Mr. Levy refers to "an increasing number of false abuse charges," the only example he offers for this dangerous allegation is the Ramona case, which has only been partially decided thus far. There is no "increasing number of false abuse charges." There is an increasing number of survivors of child sexual abuse coming forward and speaking out about their lives for the first time in history, and there is a growing backlash by perpetrators and their collaborators. The Child Abuse Accountability Act would offer one more important weapon to sexually abused people in their struggle for justice, and it deserves the support of every Member of Congress.

REDLANDS, CA,
July 9, 1994.

Congresswoman PAT SCHROEDER,
Rayburn House Office Building, Washington, DC.

DEAR CONGRESSWOMAN SCHROEDER: I am writing to thank you, your staff, and your colleagues for sponsoring the Child Abuse Accountability Act, H.R. 3694 and for your dedication in bringing it before these Congressional Hearings today, July 12, 1994.

My name is Elizabeth Medlicott, sister of the plaintiffs Susan Hammond and Sharon Simone who won a precedent-setting civil lawsuit in Denver County on May 16, 1990, against our father, Edward Rodgers, for physical, sexual, and emotional abuse suffered over a period of approximately twenty years.

I was the last sister to give testimony as a key witness before the judge and jury. Their acknowledgment of our abuse and of our father's accountability was a substantial turning point in my recovery. The terrible secrets of this tragic family (for child abuse and domestic violence are indeed tragedies far too common in our society) were broken. Yet, even with this judgment of 2.3 million dollars, my father still remains unaccountable because of a government that protects child abusers by not allowing the garnishment of federal pensions for court-ordered awards to victims.

That is why this bill is so important. A government that does not follow through, at every level, on its commitment to protect children, is a government that says one thing and does another. This kind of hypocrisy is a direct parallel to the experience of an abused child . . . the public hears and sees one thing, (the IMAGE), while the child experiences another. The Child Abuse Accountability Act will help our government to match its words to its actions. And that is no small thing.

Thank you, again, for your tireless efforts on behalf of survivors of child abuse and domestic violence.

Respectfully yours,

ELIZABETH MEDLICOTT,
Educator / Child Advocate, State of California.

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